SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 586

WILLIAM JACKSON, JR., PETITIONER,

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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IN THE UNITED STATES COURT OF CLAIMS

No. 403-60

WILLIAM JACKSON, JR., *Plaintiff*

v.

THE UNITED STATES OF AMERICA, *Defendant*

Petition—Filed October 19, 1960

To the Honorable Chief Judge and the Judges of the United States Court of Claims:

The Petition of William Jackson, Jr., a resident of Kansas City, Missouri, represents the following facts:

(1) The Plaintiff re-enlisted in the United States Air Force on December 7, 1955, in the grade of Airman First Class with over four years of prior service.

(2) On October 30, 1956, an information was filed in the District Court of Jackson County, Oklahoma, charging the plaintiff with rape of a female under the age of sixteen years, and on the same day a warrant was issued for his arrest.

(3) On November 16, 1956, the plaintiff was convicted in the District Court of the crime as charged, rape in the second degree, and was sentenced to serve a term of five years confinement in the Oklahoma State Penitentiary at McAlister.

2 (4) On November 24, 1956, the plaintiff was discharged from the United States Air Force under less than honorable conditions, and furnished an undesirable discharge certificate, under the provisions of Air Force Regulation 39-22 which provides for administrative discharge of an airman who is convicted of a felony by a state court.

(5) A motion for a new trial having been made and denied in the District Court, an appeal was taken to the Court of Criminal Appeals of the State of Oklahoma, the highest appellate court of criminal jurisdiction.

(6) On September 20, 1957, the Court of Criminal Appeals reversed and vacated the judgment and the sentence

because the plaintiff was unconstitutionally deprived of his right to counsel at the trial. (*Jackson* v. *State*, 316 P. 2d 213)

(7) On May 6, 1958, the District Court dismissed the proceeding against the plaintiff upon the motion of the county attorney of Jackson County.

(8) In June, 1958, the plaintiff personally appeared at the Air Force recruiting office at 905 Walnut Street, Kansas City, Missouri, and sought re-instatement into the Air Force based upon the decision of the Court of Criminal Appeals. He was referred to the Air Force Board for Correction of Military Records in Washington, D. C.

(9) Application was made to the Air Force board on February 9, 1959, and a hearing was held before the board on September 16, 1959. On April 28, 1960, the Board rendered a decision denying the application of the plaintiff.

3 (10) The plaintiff was illegally and unlawfully discharged from the United States Air Force, and the action of the Secretary of the Air Force in refusing his re-instatement and back pay records was arbitrary and capricious.

Wherefore, plaintiff demands from defendant all pay and allowances due and owing to him from the date of his unlawful discharge and prays for such other and further relief to which he may be justly entitled.

Respectfully submitted,

CHARLES D. ABLARD
1700 K Street, N.W.
Washington 6, D. C.
Attorney for the Plaintiff

IN THE UNITED STATES COURT OF CLAIMS

No. 403-60

WILLIAM JACKSON, JR., *Plaintiff*

v.

THE UNITED STATES, *Defendant*

Defendant's Answer—Filed January 18, 1961

Defendant, for its answer to the petition herein:

1. Admits the allegations in paragraph 1.

2. Admits the allegations in paragraph 2.

3. Admits the allegations in paragraph 4.

4. Admits the allegations in paragraph 4.

5. Admits the allegations in paragraph 5.

6. Admits that the Court of Appeals reversed the judgment and sentence in a published opinion as cited, but avers that the remainder of paragraph 6 is a conclusion of law.

7. Admits the allegations in paragraph 7.

8. Denies the allegations in paragraph 8 for lack of knowledge or information sufficient to form a belief as to the truth thereof.

9. Admits the allegations in paragraph 9.

10. Denies the allegations in paragraph 10.

WHEREFORE, the petition should be dismissed.

GEO. S. LEONARD
Acting Assistant Attorney General
Civil Division

CHARLES M. MUNNECKE
Attorney, Civil Division
Department of Justice

6 **Exhibit No. 1**

Application for Review of Discharge or Separation From the Armed Forces of the United States

(See instructions on reverse side before completing application. Please type or print.)

Branch of Service—Army, Navy, Marine Corps, Coast Guard, Air Force: Air Force.

1. Last name—First name—Middle initial: Jackson, William Jr.

2. Service Number: AF 18 384 622.

3. Rate or Grade at Separation: A/1C.

4. Organization at Time of Separation: 96th ARMTELCT MAINT Sqdn (SAC).

5. Nature of Separation or Type of Discharge Received: Under other than honorable conditions. Discharge certificate attached—Yes, No: No.

6. Date and Place of Separation:

7. I request the following corrective action be taken: Revocation of discharge and reinstatement in Air Force with back pay. * See reverse side under remarks.

8. Evidence submitted in support of application is listed below and forwarded. (Affidavits of witnesses may be used if desired, or they may appear in person. Affidavits must be notarized. You may also submit a brief containing arguments in support of application. If space is insufficient, use additional sheet).

9. I desire to appear before the board in person (No expense to the Government) Yes, No: Yes.

10. I desire to be represented by counsel (For instructions re Counsel, see reverse side)—Yes, No: Yes.

11. Name and address of counsel (If any): Bernard D. Craig, Attorney, 916 Walnut Street Bldg., Kansas City, Mo.

I make the foregoing statements as a part of my application with full knowledge of the penalties involved for will-

fully making a false statement. (U. S. Code, Title 18, Section 1001, formerly Section 80, provides a penalty as follows: A maximum fine of $10,000 or maximum imprisonment of 5 years, or both.)

Street or RFD: 2714 Paseo.
City and State: Kansas City, Missouri.

Date: November 4, 1958.

Signature of Applicant: William Jackson, Jr.

Note: If veteran is deceased or incompetent and the application is therefore signed by a person other than whose name appears in Item 1 above, indicate status in box below. If veteran is deceased, application will be signed by his spouse, next of kin or legal guardian. Legal proof of death or incompetency must accompany application.

Next of kin, Legal Representative, Surviving Spouse:

Signature by mark (X) must be witnessed by two persons to whom the applicant is personally well known.

Signature and address of person witnessing mark:

Signature and address of person witnessing mark:

7 INSTRUCTIONS

Do not use this form if discharged by reason of sentence of GENERAL COURT MARTIAL—Use DD Form 149.

All evidence not already included in your military or naval record must be submitted by you before the date set for hearing. Since all evidence submitted will be retained on file with your application, it is suggested that extra copies be prepared for your information if you so desire. The Review Boards do not secure evidence for you.

Review Boards of the Army, Navy, Marine Corps, Coast Guard and Air Force convene in Washington, D. C. You may appear before the Board in person. However this is not mandatory. (*Your appearance and the appearance of witnesses in your behalf will be at no expense to the Government.*) If you state on your application that you will appear before the Board in person and fail to do so without

previous satisfactory arrangement with the Board, such failure will be considered as a waiver of appearance and your case will be reviewed on the evidence contained in your military or naval record.

If you wish to be represented by Counsel, you may:

1. Furnish Counsel at your own expense.

2. Choose a Counsel from the following list of organizations, any one of which will furnish representation at no charge to you.

Either of the above methods will be at no expense to the Government. Government Counsel will not be furnished.

American Red Cross
American Legion
American Veterans of WW II
Catholic War Veterans, Inc.
Disabled American Veterans
Jewish Welfare Board
National Association for the Advancement of Colored People
Veterans of Foreign Wars

UPON COMPLETION, MAIL THIS APPLICATION AS FOLLOWS:

Army	Navy and Marine Corps	Coast Guard	Air Force
The Adjutant General Army Records Center 9700 Page Blvd. St. Louis 14, Missouri	Navy Discharge Review Board Washington 25, D. C.	Commandant, (CBD) U. S. Coast Guard Headquarters Washington 25, D. C.	Former Officers: Director of Military Personnel Hq USAF Washington 25, 25, D. C. Former Enlisted Men: Air Force Records Center 9700 Page Blvd St. Louis 14, Missouri

If you make a change in residence, notify the appropriate headquarters immediately.

Remarks: "I request that my discharge "Under other than honorable conditions" be revoked and cancelled and that I be reinstated in the United States Air Force as an Airman-First Class and that I be paid back-pay since October 29, 1956 until I am reinstated in the United States Air Force.

8 Applicant respectfully submits that a great hardship has been worked upon him by his discharge from the United States Air Force "Under Other Than Honorable Conditions" on October 29, 1956. This discharge was made by reason of the fact that he was one of several Air Force personnel together in or near Altus, Oklahoma on or about October 29, 1956 when the authorities in Altus, Oklahoma decided that they must arrest someone because one Joy Herron, who had run away from a nearby girls' home or institution, was found to have spent the night in a rooming house in Altus, Oklahoma and it was felt by the authorities that some improper conduct took place in connection with this incident. This applicant did not stay in the rooming house that night and was not alone with the girl in question at any time or at the rooming house with her except for a few minutes which was in the presence of James Riley, owner of the rooming house.

The facts are that this applicant has steadfastly maintained, except for the incident related below, that he had no improper contact with this girl, and to the best of his knowledge, she has never charged him with having any improper contact with her.

The record of the case shows that after this applicant was arrested, he was coerced and threatened into pleading guilty because he was afraid for his life and limb, but upon appeal to the Court of Appeals of Oklahoma, this plea of guilty was set aside and the case remanded to the trial court for trial because of the circumstances surrounding the way the plea of guilty was obtained.

Thereafter, and on May 6, 1958, this case was dismissed against William Jackson, being case No. 1943 in District Court within and for Jackson County, Oklahoma and certified copy of this Order of Dismissal is hereto attached and made a part hereof. This applicant respectfully submits that he is the innocent victim of circumstances beyond his control in this matter and that he is entitled to have his discharge from the United States Air Force set aside and be reinstated in the Air Force to the rank, Airman First Class, with back pay.

WILLIAM JACKSON, JR.
William Jackson, Jr.

8

9 IN THE DISTRICT COURT WITHIN AND FOR JACKSON COUNTY, OKLAHOMA

No. 1943

STATE OF OKLAHOMA, *Plaintiff*

v.

WILLIAM JACKSON, *Defendant*

Order of Dismissal

Now, on this 6th day of May, 1958, the above entitled cause coming on to be heard upon the motion of the County Attorney to dismiss said cause, and the court being fully advised in the premises finds that the facts and evidence in this case are not sufficient to prove the defendant guilty beyond a reasonable doubt and are not sufficient basis for a conviction.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the court that this cause be, and the same is hereby dismissed for the reason that the facts and evidence are not sufficient, upon which to base a conviction or prove the defendant guilty beyond a reasonable doubt.

WELDON FERRIS
District Judge

ATTEST: CLETIS PORTER
County Clerk
By CONNIE CONNELL, Deputy
(Seal)

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10 IN THE DISTRICT COURT WITHIN AND FOR JACKSON COUNTY, OKLAHOMA

No. 1943

STATE OF OKLAHOMA, *Plaintiff*

v.

WILLIAM JACKSON, *Defendant*

Order of Dismissal

Now, on this 6th day of May, 1958, the above entitled cause coming on to be heard upon the motion of the County Attorney to dismiss said cause, and the court being fully

advised in the premises finds that the facts and evidence in this case are not sufficient to prove the defendant guilty beyond a reasonable doubt and are not sufficient basis for a conviction.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the court that this cause be, and the same is hereby dismissed for the reason that the facts and evidence are not sufficient upon which to base a conviction or prove the defendant guilty beyond a reasonable doubt.

WELDON FERRIS
District Judge

ATTEST: CLETIS PORTER
Court Clerk
By CONNIE CONNELL, Deputy
(Seal)

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11 **Application for Correction of Military or Naval Record**

Under the Provisions of Section 207 of the Legislative Reorganization Act of 1946, As Amended

(See instructions on reverse side BEFORE completing application)

Branch of Service—Army, Navy, Air Force, Marine Corps, Coast Guard: Air Force.

1. Name (Last Name—First Name—Middle Initial): Jackson, William Jr.
2. Rate, rank or grade at time of alleged error in military record: A/1C.
3. Service number: AF 18 384 622.
4. Nature of discharge or separation from service (if now on active duty, forward application through channels): Other than Honorable conditions.
5. Present status, if any, with respect to the Armed Services (Active duty, reserve, retired etc.): See No. 4.
6. Date of separation from service: Nov. 24, 1956.
7. Organization at time of alleged error in record: 96th ARMTELCTMAINT Sqdn. (SAC).

8. I desire to appear before the board in Washington, D. C. (no expense to the Government)—Yes, No: Yes.

9. I will be represented by counsel (no expense to the Government)—Yes, No: Yes.

10. I desire to have witnesses appear in person in support of this application (no expense to the Government)—Yes, No: No.

11. Name and address of counsel (if any): Bernard D. Craig, 916 Walnut St. Bldg., Kansas City, Mo.

12. Witnesses and nature of testimony (Principal facts to which witness will testify)—Name: None. Address; Nature of Testimony.

13. I request the following correction of error or injustice and request payment of any amounts found to be due on account of such correction: Also see data submitted with Application for Review of Discharge or Separation previously submitted November 4, 1958, now being held by you. Furthermore I request that my discharge "under other than Honorable conditions" be corrected by being revoked and/or cancelled, and that I be reinstated in the United States Air Force (see reverse side).

14. I believe the record to be in error or unjust in the following particulars: The record is in error and/or unjust because the discharge states that I was discharged "under other than Honorable Conditions" by reason of conviction of civil court AFR 39-22 (SDN-284) on November 24, 1956, when the facts are that I was coerced and threatened into pleading guilty because I was afraid for my life and limb, but this plea of guilty was set aside on Appeal by the Circuit Court of Appeals of Oklahoma, and

15. In support of this application I submit as evidence the following: See attached statement.

16. Applicant must sign in the space provided. If the record in question is that of a person who is deceased or incompetent, legal proof of death or incompetency must accompany application. If application is signed by spouse, widow or widower, next of kin or legal representative, indicate relationship or status in appropriate

box. (Check which) Spouse, Widow, Widower, Next of Kin, Legal Representative, Other (specify).

17. I make the foregoing statements, as part of my claim, with full knowledge of the penalties involved for wilfully making a false statement or claim. (U. S. Code, Title 18, Sec. 287,1001, provides a penalty of not more than $10,000 fine or not more than 5 years imprisonment or both.)

18. Complete address (Applicant should forward notification of all changes of address): 3423 Euclid, Kansas City, Missouri.

19. Date: February 9, 1959.

20. Signature (Applicant must sign here): William Jackson, Jr.

Docket No. 59-255

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12 INSTRUCTIONS

1. For detailed information see:
   Air Force Regulation 31-3
   Army Regulation 15-185
   Coast Guard, Code of Federal Regulations
   Title 33, Part 52
   Navy, NAVEXOS P-473, as revised

2. This form is to be submitted IN DUPLICATE.

3. Complete all items. If the question is not applicable, mark—"None".

4. If space is insufficient, use "Remarks" or attach additional sheet if necessary.

5. Various veterans and service organizations furnish competent counsel without charge.

6. List all attachments or inclosures.

7. ITEMS 8 through 12—Personal appearance of applicant or his witnesses at hearing or representation by counsel is not required to insure full and impartial consideration of applications which qualify for hearing. Such appearances and representations are permitted, at no expense to the Government when a hearing is authorized.

8. ITEM 14—In order to justify correction of a military or naval record, it is necessary for the applicant to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the alleged entry or omission in the record was in error or unjust. Evidence may include affidavits or signed testimony of witnesses, executed under oath, and a brief of arguments supporting application. All evidence not already included in your record must be submitted by you. The responsibility for securing new evidence rests with the applicant.

MAIL COMPLETED APPLICATIONS TO APPROPRIATE ADDRESS BELOW

Army	Navy and Marine Corps	Coast Guard	Air Force
Army Board For Correction Of Military Records Department of the Army Washington 25, D.C.	The Secretary of the Navy (*Board for Correction of Naval Records*) Navy Department Washington 25, D.C.	U.S. Coast Guard Attn: Senior Member Board For Correction of Coast Guard Records Washington 25, D.C.	Headquarters USAF Air Adjutant General Attn: Personnel Records Service Division Washington 25, D.C.

Remarks: *Paragraph #13 continued*—as an A/1C and that I be paid back pay since October 29, 1956 until I am reinstated in the United States Air Force.

Paragraph #14—then the case against me was subsequently dismissed on May 6, 1958 by order of the District Court of Jackson County, Oklahoma, certified copy of which Order of Dismissal was previously submitted with my Application for Review of Discharge, and is now being held by you. Furthermore this error has prevented me from obtaining employment since my discharge, as I have been turned down on job after job, for which I was qualified by reason of my previous experience in the Air Force, and I believe it to be for no other reason than the error and unjust record in my discharge.

However my principal and primary objective is to obtain reinstatement in the Air Force at my former rank of A/1C, with back pay, and of course, that my record be corbe corrected as herein requested.

13 Applicant respectfully submits that a great hardship has been worked upon him by his discharge from the United States Air Force "Under Other than Honorable Conditions" on October 29, 1956. This discharge was made by reason of the fact that he was one of several Air Force personnel together in or near Altus, Oklahoma on or about October 29, 1956 when the authorities in Altus, Oklahoma decided that they must arrest someone because one Joy Herron, who had run away from a nearby girls' home or institution, was found to have spent the night in a rooming house in Altus, Oklahoma and it was felt by the authorities that some improper conduct took place in connection with this incident. This applicant did not stay in the rooming house that night and was not alone with the girl in question at any time or at the rooming house with her except for a few minutes which was in the presence of James Riley, owner of the rooming house.

The facts are that this applicant has steadfastly maintained, except for the incident related below, that he had no improper contact with this girl, and to the best of his knowledge, she has never charged him with having any improper contact with her.

The record of the case shows that after this applicant was arrested, he was coerced and threatened into pleading guilty because he was afraid for his life and limb, but upon appeal to the Court of Appeals of Oklahoma, this plea of guilty was set aside and the case remanded to the trial court for trial because of the circumstances surrounding the way the plea of guilty was obtained.

Thereafter, and on May 6, 1958, this case was dismissed against William Jackson, being case No. 1943 in District Court within and for Jackson County, Oklahoma, and a certified copy of this Order of Dismissal is hereto attached and made a part hereof. This applicant respectfully submits that he is the innocent victim of circumstances beyond his control in this matter, and that he is entitled to have his discharge from the United States Air Force set aside and be reinstated in the Air Force to the rank Airman First Class, with back pay.

WILLIAM JACKSON JR.
William Jackson Jr.

14

LAW OFFICES OF
GRANOFF, LEVY AND CRAIG
KANSAS CITY 6, MISSOURI

February 16, 1959

Department of Air Force
Pentagon Building
Washington, D. C.

Attn: Lt. Colonel J. H. Thompson
Re: William Jackson Jr.

Dear Lt. Colonel Thompson:

This will acknowledge receipt of your letter of January 30, 1959 on the above matter and confirmation of our long distance telephone call thereon a short time thereafter.

In accordance therewith, attached please find in duplicate, application for correction of military or naval record for the above together with attachments in support thereof.

There is also attached upon the face of this letter, a copy of your letter to me of January 30, 1959 as you requested so that this matter may be properly identified.

I would appreciate your giving me some estimate as to when this case may be set for hearing in Washington so that Mr. Jackson and myself may make arrangements to be there in person.

It will be difficult for Mr. Jackson to get together enough money for the expenses of the trip to Washington as I know from my own personal contact with him for he has been unable to get a job. In this connection, he has made several applications to the Civil Service Bureau, the Veterans Administration and others for jobs that he should be qualified to perform by reason of his past experience in the Air Force, but in every instance even though he was applying for jobs that were open, his application would be turned down on the grounds that he was ineligible.

It is therefore, apparent that the fact that he has this discharge under other than honorable conditions, is making it impossible to obtain work he is qualified to do, even though the case that was filed against him in Oklahoma has been dismissed.

15 Furthermore, Mr. Jackson really desires to get back into the Air Force and make a career out of the Air Force, and for that reason, he desires to appear personally with counsel, to make every effort to have his Air Force record corrected so that he can get back into the Air Force and, of course, receive his back pay, if the circumstances of this case justify the payment of same.

Thanking you for your attention to this matter and looking forward to hearing from you just as soon as you can make an estimate as to when this case may be heard in Washington, I am

Yours sincerely,

BERNARD D. CRAIG
Bernard D. Craig
Counsel for William Jackson, Jr.

BDC:jld
cc: William Jackson Jr.

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16 DEPARTMENT OF THE AIR FORCE
WASHINGTON

17 August 1959

SAFCB 59-255
CERTIFIED

Dear Mr. Jackson:

You are advised that the Air Force Board for the Correction of Military Records will convene and consider your case at 9:30 A.M., Wednesday 16 September 1959. Since we have no way of determining precisely the amount of time required for the case preceding yours, the hour mentioned is our best estimate only.

You have previously indicated that you desire to appear personally before the Board and will be represented by counsel. You should report to room 5C-860 The Pentagon, Washington 25, DC, with counsel and/or witness at the time and on the date specified in paragraph one above, at no expense to the Government.

It is requested that you read carefully the enclosed Form. Complete the information on the Form, sign and return it to us immediately.

A copy of this letter and a copy of the brief have been sent to your counsel, Mr. Bernard Craig.

Sincerely yours,

FRANK D. HARDIN
Executive Secretary
Air Force Board for the Correction of Military Records

Enclosures—2
1. Brief
2. Form letter

Mr. William Jackson, Jr.,
3423 Euclid
Kansas City, Missouri

DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

28 April 1960

59-255 (SAFCB)
(CERTIFIED)

Dear Mr. Jackson:

A review of your case has been held in accordance with the regulations governing the procedures of the Air Force Board for the Correction of Military Records.

It is the Board's decision that no change, correction or other modification of your military record is warranted under the circumstances of this case. The Assistant Secretary of the Air Force has reviewed the proceedings of the Board and has approved the decision of the Board. A copy of the approved decision is enclosed.

A copy of this letter, a copy of the Directive, a copy of the proceedings and a copy of the transcript of testimony has been forwarded to your counsel, Mr. Bernard Craig, 916 Walnut Street, Kansas City, Missouri.

Also enclosed and returned to you are four copies of CSC Form 4008, Diploma dated 25 January 1957, DD Form

256 AF dated 6 December 1955 and DD Form 256 A, dated 11 October 1951, which were forwarded along with your application to this Board.

Sincerely,

FRANK D. HARDIN
Executive Secretary
Air Force Board for the Correction of Military Records

Enclosures
Copy of Directive and those listed in last paragraph above.

Mr. William Jackson Jr.
2220 Prospect Avenue
Kansas City, Missouri

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18 DEPARTMENT OF THE AIR FORCE
WASHINGTON

OFFICE OF THE SECRETARY

59-255 (SAFCB) April 28, 1960

JACKSON, WILLIAM JR.
AF 18 384 622

MEMORANDUM FOR THE CHAIRMAN, AF BOARD FOR THE CORRECTION OF MILITARY RECORDS

Having received and approved the recommendations of the Air Force Board for the Correction of Military Records and under authority of Section 1552, Title 10, United States Code (70A Stat 116), it is directed that:

1. The application of WILLIAM JACKSON, JR., AF 18 384 622 (Docket Number 59-255) before the Air Force Board for Correction of Military Records be, and it hereby is, denied.

2. All necessary and appropriate action be taken in consonance with this Directive.

LYLE S. GARLOCK
Lyle S. Garlock
Assistant Secretary of the Air Force

18

19 PROCEEDINGS OF THE

Air Force Board for the Correction of Military Records
ROOM 5C 860, The Pentagon Building
Washington, D. C.

28 April 1960

I certify that the hereinafter recorded proceedings of the Air Force Board for the Correction of Military Records are a true and complete record of the proceedings of this Board in the case of WILLIAM JACKSON, JR., AF 18 384 622, Docket Number 59-255.

The applicant requests that his other than honorable discharge be revoked and that he be reinstated in the United States Air Force as an Airman First Class with pay and allowances from 20 October 1956.

The Air Force Board for the Correction of Military Records met in Room No. 5C 883, The Pentagon Building at 11:25 A.M., on Wednesday, 16 September 1959, pursuant to the call of the Acting Chairman.

Those present were:

Mr. John E. Whalan, Jr., Acting Chairman
Mr. Daniel M. Pruitt, Member
Mr. Herbert R. Wildman, Member (Absent, but reviewed Exhibits A.B.C.&D before voting on the case).

The applicant made a personal appearance before the Board, was represented by counsel Mr. Bernard Craig, and did not present witnesses in his behalf.

The following documentary evidence was considered:

Exhibit A. Applicant's request for corrective action.

Exhibit B. Brief of Examiner, Mr. Norman A. Compton.

Exhibit C. Transcript of testimony.

Exhibit D. Master Personnel Records of the applicant.

THE BOARD FINDS THAT:

1. The applicant has exhausted all remedies provided by law or regulation.

20 2. Air Force records show that applicant reenlisted in the United States Air Force on 7 December

1955, in the grade of Airman First Class, with over four years of prior service.

3. On 30 October 1956, Frank Penick, Justice of the Peace, Altus, Oklahoma, issued a warrant for applicant's arrest on a charge of Rape. On 30 October 1956, information was filed in the District Court, Jackson County, Oklahoma, charging applicant with Rape as set forth below:

> "I, Ross Rutherford, County Attorney of the county of Jackson and state of Oklahoma, duly authorized and empowered by law to inform offense committed and triable within said County and State, come now here and give the Court to understand and be informed, that at and within said County and State, on or about the 29th day of October 1956, and anterior to the filing of this information, William Jackson then and there being, did then and there, wilfully, unlawfully, wrongfully and feloniously accomplish the act of sexual intercourse with, carnally know and rape one Joy Herron a female person under the age of sixteen years, to-wit: of the age of fifteen years, and not the wife of him, the said William Jackson."

4. On 1 November 1956 a Preliminary Hearing was had before Frank Penick, Justice of the Peace, applicant appearing in person and by attorney Ryan Kerr. Applicant was held to answer and his bail was fixed at $5000.00. Pursuant to an existing agreement applicant was released to the custody of the Commander, Altus Air Force Base, Oklahoma.

5. On 16 November 1956, applicant appeared in open court before Judge Weldon Ferris and pleaded guilty to the crime of Rape in the Second Degree. Thereupon, applicant was sentenced by Judge Ferris to a term of five years confinement in the State Penitentiary at MacAlester, Oklahoma.

6. On 24 November 1956, the applicant was discharged from the service under other than honorable conditions
under the provisions of Air Force Regulation 39-22
21 and furnished an Undesirable discharge certificate.

7. On 22 December 1956, applicant, represented by attorneys Amos J. Hall and O. B. Graham, Jr., made a

motion that applicant be granted a new trial based upon the fact that applicant's plea of guilty had not been voluntary and the Court acted without jurisdiction because applicant had not competently, intelligently and effectively waived his rights to counsel.

8. On 8 January 1957, the motion for a new trial was overruled by District Judge Weldon Ferris. On 9 January 1957, the case was referred to the Criminal Court of Appeals for the State of Oklahoma by applicant's attorneys. On 20 September 1957 the Criminal Court of Appeals for the State of Oklahoma reversed and vacated the previous sentence and issued a mandate to the District Court of Jackson County ordering a new trial.

9. On 6 May 1958 Judge Weldon Ferris issued an Order of Dismissal,

> ". . . for the reason that the facts and evidence are not sufficient, upon which to base a conviction or prove the defendant guilty beyond a reasonable doubt."

10. A hearing was had in this case and applicant appeared with counsel and testified under oath in support of this application, to the effect:

That about 0500, 29 October he was returning to Altus Air Force Base with Airman Bennett and Airman Reese; that on this cold morning while driving down the road he was flagged by a person causing him to stop to keep from running the person down; that the person came to
22 the car, opened the door and got into the car; that the person was a girl, a white girl, and she asked for a ride into town; that the girl was permitted to ride but was told that she would have to leave the car upon reaching Altus since her presence in a car with colored airmen could cause trouble; that upon reaching Altus the girl got out of the car at a service station about one block from the police station; that after getting gasoline the owner of the car, Bennett, gave the girl permission to ride further; that they then proceeded to the house of James Riley, where the car was to be parked; that after arrival at the Riley house the girl and Bennett and Reese left the car; that later Reese

came out of the house and said they could stay all night for $2.00; that he said, "No. If you stay here all night with this young lady, you'll get us all in trouble."; that a taxi which had been called arrived and he and the other airmen proceeded to the base; that he signed in at the base at 0600; that he never saw Reese or Bennett again; that he performed his duties that day and in the evening returned to Altus to get a haircut and pick up Bennett's car; that when he arrived at the Riley house at about six o'clock in the evening he was arrested by the Altus police; that while in the custody of the police he was placed in fear of his life and limb; that he was placed in jail; and "about eight o'clock in the morning the military come and got me and put a $10,000 bond on me. They carried me down to the base and put me in the stockade. I stayed there until November 16th. They come out and give me five years"; that he was never offered any legal assistance by the Base; that two JAG officers from the base would send for him about every other day and urge him to plead guilty and take five years; that the two JAG officers did not appear
23 at his trial; that the two JAG officers did appear at his trial; that he never had a trial; that he did have a trial; that the judge asked him how he pleaded and he said not guilty; that when the judge said "Bring the gentleman forward"; that the County Attorney, "He grabbed me, you know, by one hand and one ear and I was in the middle. He asked me how I pleaded and I said not guilty"; that the judge said, "Let the young man get a counsel"; that he then went into the County Attorney's office with the two JAG officers; that the county attorney told him if he did not plead guilty he would give him life or the electric chair; that the two JAG officers were present at this time; that Lt Eckert, one of the JAG officers, talked to him and urged him to take the five years; that he was then carried before the judge and given five years; that he never saw the girl after leaving her at Riley's house; and, that at no time did he have sexual intercourse with the girl, Joy Herron.

11. Careful consideration has been given to the application, the testimony of the applicant, and to the evidence of record. The Board notes that in his application the following appears over the signature of the applicant: ". . . the

facts are that I was coerced and threatened into pleading guilty because I was afraid of my life and limb . . .'' However, in his sworn testimony before the Board the applicant repeatedly stated that *at no time did he plead guilty* to the rape of Joy Herron. In our opinion applicant has attempted to portray himself as the innocent and helpless pawn of the Oklahoma authorities as well as the military authorities and that he became the sacrificial victim in the case due solely, he would have us believe, to his race and color. In this attempt he has failed dismally. In his sworn testimony before the Board the applicant's answers
24 to questions are in so many cases misleading or false that to detail all of the inconsistencies here would serve no useful purpose. Suffice it to say, we find his testimony regarding the circumstances of his case to be so inherently improbable and so incredible as to be unworthy of belief.

12. Applicant's evasiveness is exemplified by the following which appears on page 64 of the Exhibit C:

Mr. Whalan: Aside from the arrest and conviction concerning the case about which we are now talking, have you ever been arrested?

The applicant: No—Maybe for child support.

Mr. Whalan: Maybe? This is something you know about, certainly, whether you have been arrested.

The applicant: For child support.

Mr. Whalan: Child support. When was that?

Applicant: This year.

Mr. Whalan: This year——

Applicant: —last year on account I didn't—I had a $30.00 allotment going to her from the government since I've been out. She's been having me arrested every time and picked up because I don't have the money.

13. The ''Yes I did. Yes I did not'', aspects of applicant's testimony are exemplified by the following appearing on page 65 of Exhibit C:

Mr. Whalan: During the time of your trial in the District Court did the judge ask you if you wanted to be represented by counsel, by an attorney.

The applicant: I never had a trial. I never had a trial.

25 14. Applicant requests that his discharge be revoked and that he be reinstated to duty with the United States Air Force. Whatever the merits of his case may have been they have been dissipated by his failure to be completely truthful and straightforward in his testimony before the Board. The action, or lack of action, by this Board upon applicant's request can neither add to nor detract from any legal rights he may have with respect to his case. On the other hand this Board is not required to afford equitable relief if relief be merited when such relief is forfeited by the deliberate acts of the applicant. The application should be denied.

THE BOARD RECOMMENDS THAT:

1. The application of WILLIAM JACKSON, JR., AF 18 384 622 (Docket Number 59-255) before the Air Force Board for Correction of Military Records be denied.

2. All necessary and appropriate action be taken in consonance with this recommendation.

JOHN WHALAN
John E. Whalan, Jr.
Acting Chairman

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26 BEFORE THE
AIR FORCE BOARD FOR THE CORRECTION OF MILITARY RECORDS

Docket No. 59-255

In the Matter of:
JACKSON, William Jr.
AF 18 384 622
Former A/1C

PART I (TAB A) THE APPLICANT REQUESTS THAT: His discharge under other than honorable conditions on 24 November 1956, be revoked or canceled, that he be reinstated in the Air Force as an A/1C, and that he be paid back pay since discharge.

PART II MILITARY RECORD:

1. Date of birth:	16 June 1934
2. Date of reenlistment:	7 Dec 1955, for 6 days, A/1C, with 4 yrs, 0 mos, 25 days prior sv.
3. Date awarded Good Conduct Medal:	10 Apr 1956
4. Disciplinary action:	Art 15, 20 Apr 56, failure to repair, 14 days restriction imposed
5. Date of alleged incident leading to conviction by civil court:	29 Oct 1956
6. Date of trial and conviction by District Court, Jackson, Okla:	16 Nov 1956
7. Date of discharge from service:	24 Nov 1956, UP AFR 39-22, Conviction by Civil Court. Furnished Undesirable Discharge
8. Date of Order of Dismissal by the trial court:	6 May 1958
9. Marital Status:	Married
10. Address:	3423 Euclid, Kansas City, Missouri

PART III (TAB B) THE APPLICANT STATES THAT: A great hardship has been worked upon him as a result of his discharge from the Air Force under other than honorable conditions with an Undesirable Discharge as a result of conviction by civil court. The discharge has prevented him from obtaining employment for which he is qualified as a result of his experience in the Air Force.

With reference to the facts surrounding the incident which lead to his trial and conviction by civil court, with subsequent discharge from the Air Force, the applicant states the following:

27 (TAB B) "This discharge was made by reason of the fact that he was one of several Air Force personnel together in or near Altus, Okla on or about October 29, 1956 when the authorities in Altus, Oklahoma decided that they must arrest someone because one Joy Herron, who had run away from a nearby girls' home or institution, was found to have spent the night in a rooming house in Altus, Oklahoma and it was felt by the authorities that some improper conduct took place in connection with this incident. This applicant did not stay in the rooming house that night and was not alone with the girl in question at any time or at the rooming house with her except for a few minutes which was in the presence of James Riley, owner of the rooming house.

"The facts are that this applicant has steadfastly maintained, except for the incident related below, that he had no improper contact with this girl, and to the best of his knowledge she has never charged him with having any improper contact with her.

"The record of the case shows that after this applicant was arrested, he was coerced and threatened into pleading guilty because he was afraid for his life and limb, but upon appeal to the Court of Appeals of Oklahoma, this plea of guilty was set aside and the case remanded to the trial court for trial because of the circumstances surrounding the way the plea of guilty was obtained.

"Thereafter, and on May 6, 1958, this case was dismissed against William Jackson, being case No. 1943 in District Court within and for Jackson County, Oklahoma, and a certified copy of this Order of Dismissal is hereto attached and made a part hereof. This applicant respectfully submits that he is the innocent victim of circumstances beyond his control in this matter, and that he is entitled to have his discharge from

the United States Air Force set aside and be reinstated in the Air Force to the rank Airman First Class, with back pay."

(TAB C) In support of his application the applicant submits a certified copy of the *Order of Dismissal* issued by the District Court of Jackson County, Oklahoma, dated 6 May 1958, which indicates that "upon the motion of the County Attorney to dismiss said cause, and the court being fully advised in the premises finds that the facts and evidence in this case are not sufficient to prove the defendant guilty beyond a reasonable doubt and are not sufficient basis for a conviction. IT IS THEREFORE ORDERED ADJUDGED AND DECREED by the court that this cause be, and the same is hereby dismissed for the reason that the facts and evidence are not sufficient upon which to base a conviction or prove the defendant guilty beyond a reasonable doubt."

PART IV THE RECORDS SHOW THAT: The applicant reenlisted in the Air Force on 7 Dec 1955, for six years in the grade of A/1C, with four years and 25 days prior military service. He was awarded the Good Conduct Medal on 10 Apr 1956.

28 (TAB D) On 2 Nov 1956 the County Attorney of Jackson County, Oklahoma, filed an information against the applicant alleging that the applicant did, on or about 29 October 1956 "willfully, unlawfully, wrongfully and feloniously accomplish the act of sexual intercourse with, carnally know and rape one Joy Herron a female person under the age of sixteen years, to wit: of the age of fifteen years, and not the wife of him, the said William Jackson."

(TAB E) The above information was presented in open court in the District Court for Jackson County, Oklahoma, on 16 Nov 1956, to which he pleaded Guilty. He was sentenced to 5 years confinement in the State Penitentiary at McAlester, Oklahoma.

(TAB F) Effective 24 Nov 1956, the applicant was discharged from the service under other than honorable conditions by reason of conviction by civil court, under AFR 39-22. He was furnished an Undesirable Discharge certificate.
As stated by the applicant in Part III of this brief, upon appeal to the Court of Appeals of Oklahoma, the plea of guilty was set aside and the case remanded to the trial court.

(TAB C) On 6 May 1958, the District Court for Jackson County, Oklahoma, dismissed the case "for the reason that the facts and evidence are not sufficient upon which to base a conviction or prove the defendant guilty beyond a reasonable doubt."

NORMAN A. COMPTON
Norman A. Compton
Examiner

29

AIR FORCE
FOR THE
CORRECTION OF MILITARY RECORDS

Docket No. 59-255

In the Matter of:

WILLIAM JACKSON, JR.
AG 18 384 622

The Air Force Board for the Correction of Military Records convened at 11:25 o'clock a.m., on Wednesday, 16 September 1959, in Room 5C-883, The Pentagon, Washington, D. C., to hear the above entitled matter.

BOARD MEMBERS:

Mr. J. E. Whalan, Jr., Acting Chairman
Mr. D. M. Pruitt
Mr. Frank D. Hardin, Executive Secretary
Mr. Norman A. Compton, Examiner

APPEARANCES:

Mr. William Jackson, Jr.—Applicant.
Mr. Bernard Craig—Counsel for Applicant

Reporter: Julian W. Penn

Mr. Whalan: I would like to explain to Applicant and Counsel that due to unforeseen circumstances we have only two Board members present this morning instead of the usual three. With Counsel's indulgence, we will arrange for the third member to read the testimony from the record, and we will proceed, provided Counsel is willing to do so.

The Counsel: That will be satisfactory.

Mr. Whalan: Does the Applicant intend to testify?

The Counsel: Mr. Chairman, I am not acquainted with your procedure at all. We want to conform our presentation to your procedure so that we do not unduly prolong the hearing. I am prepared to ask the Applicant questions, bringing him up to the present time in covering his past history in a rather orderly fashion. We can proceed on that basis, if that meets with your approval.

Mr. Whalan: That will be quite all right.

The Counsel: Or if you would prefer to ask the questions directly on the points that you are interested in, why, we would be happy to comply with that.

Mr. Whalan: Your suggestion is fine. I would like to point out that we do not try to stick to a formal formula. I would suggest you proceed as you suggested, present the case, ask the questions that you wish, and then if the Board has any questions to ask of the Applicant, the Board members will do so.

31 In this case, then I would like to swear in the Applicant.

(The Applicant was duly sworn.)

Mr. Whalan: Mr. Craig, you just proceed with your presentation.

The Counsel: Thank you, Mr. Chairman.

Mr. Jackson has a very soft voice, as I have learned from my conversations with him, and I have urged him to speak loudly enough so that everyone can hear him. If you are not hearing him, I wish you would please immediately caution him on that so that you will hear everything

he does say. So now, Mr. Jackson, be sure that you speak up.

The Applicant: Yes, sir.

Whereupon,

WILLIAM JACKSON,

the Applicant, having been first duly sworn, was examined and testified as follows:

Examination

By the Counsel:

Q. Will you please state your name. A. William Jackson, Jr.

Q. And where do you live? A. 2220 Prospect, Kansas City, Missouri.

Q. Where were you born, Mr. Jackson? A. Langston, Oklahoma.

32 Q. Are your mother and father both living at the present time? A. No, sir, they are not. My mother is dead; my father is living.

Q. Does he live in Langston, Oklahoma? A. Yes, sir.

Q. Would you please tell this Board your educational background. A. I finished high school. I finished grade school and four years of high school.

Q. Did you graduate from high school? A. Yes, sir, I did.

Q. Immediately upon graduation from high school, how old were you? A. I was seventeen.

Q. Did you enter the Armed Services then? A. Yes, sir.

Q. And have you been continuously in the Armed Services until the date of your separation, which is the subject matter of this proceeding? A. Yes, sir.

Q. Upon graduation, what branch of the military service did you go in? A. Army.

33 Q. How long were you in the Army? A. Eight months and twenty-six days.

Q. What did you go in the Army as? A. Private.

Q. What did you go in the Army as? A. Private.

Q. And what did you come out as? A. PFC.

Q. Did you receive an honorable discharge? A. Yes, sir.

Q. I hand you what is referred to as "Honorable Discharge of the United States Army for William Jackson," showing discharge as Private, E-2, Regular Army, dated October 11, 1951, and ask you if this is your certificate of honorable discharge (handing document to Applicant). A. Yes, sir, it is.

The Counsel: Is it proper to have these referred to as "exhibits?"

Mr. Whalan: Yes, it is.

The Counsel: I would like to have this marked as "Applicant's Exhibit 1."

Mr. Whalan: Yes, sir.

The Counsel: We offer Applicant's Exhibit 1 in evidence.

(The document referred to was marked "Applicant's Exhibit 1" and received in evidence.)

By the Counsel:

Q. Mr. Jackson, upon your discharge from the Army, did you immediately reenlist in the Air Force?

34 A. Yes, sir.

Q. What did you go in the Air Force as? A. PFC.

Q. And then did you receive an honorable discharge from the Air Force? A. Yes, sir, I did.

Q. (Handing document to Applicant) I hand you what has been marked as "Applicant's Exhibit 2," being an honorable discharge, dated December 6, 1955, from the United States Air Force for William Jackson, Jr., as an Airman, First Class, and ask if this is your discharge. A. Yes, sir.

The Counsel: Applicant offers "Exhibit 2" in evidence.

(The document referred to was marked "Applicant's Exhibit 2" and received in evidence.)

By the Counsel:

Q. Did you immediately reenlist in the Air Force upon this discharge? A. Yes, sir, I did.

Q. Did you then remain in the Air Force until the discharge that you received under less-than-honorable conditions, which is the subject of this proceeding? A. Yes, sir.

Q. Would you please tell this Board just what you did in the Air Force. What was your line of duty?
35 A. My line of duty was supply sergeant, tech sergeant.

Q. You were an Airman, First Class, but your actual duties were those of a technical staff sergeant. What did you do as an acting technical staff sergeant? A. I would order tech supplies, unit supply.

Q. What is a unit supply? A. Receiving all incoming men, issuing out bedding.

Mr. Whalan: Just a minute. I would like to explain to you now your purpose for meeting before the Board today is a very important one to you. In order for the Board to be able to hear your testimony, on which the Board is going to have to base its decision, we are going to have to know what you say. This is also particularly important since we have one Board member absent, who will want to study very carefully every word that you say and that your attorney says. So, make sure that you make an extra effort to speak loudly. Will you do that, please?

The Applicant: Yes, sir.

Mr. Whalan: Good.

By the Counsel:

Q. As an Airman, First Class, and an acting technical staff sergeant, did you have under your charge the stock room? A. Yes, sir.

Q. What was in the stock room? A. Sheets, blankets, rifles, and bedding.

36 Q. How about radio equipment? A. I was handling tech supplies, all kinds of radio equipment, and secret and top secret stuff.

Q. Being in charge of radio equipment, did you have to get a security clearance? A. Yes, sir, I did.

Q. Were you cleared for secret classification? A. Yes, sir.

The Counsel: I ask the Reporter to mark this document, which is dated January 25, 1957, being a Certificate of Graduation from the Supply Officer Course of the Air University of the United States Air Force Extension Course Institute.

Q. (Handing document to Applicant) I hand you what has been marked "Applicant's Exhibit 3" and ask if you took this Extension Course Institute at the Air University of the United States Air Force and received this Certificate of Graduation from the Supply Officer Course. A. Yes, sir, I did.

Q. I notice that this is dated January 25, 1957. Did you receive this after your separation from the Air Force? A. Yes, sir.

Mr. Pruitt: Do we understand that this is a correspondence course?

The Counsel: Was it a correspondence course, Mr. Jackson?

The Applicant: Yes, sir. I was able to take it on the base. The base educational officer come around and
37 asked were we eligible, and I was eligible to take it, so he recommended that I take it.

Mr. Pruitt: You were not required to take it?

The Applicant: No, sir, I wasn't required, but it was suggested that I take it.

The Counsel: You started it before your separation and then you completed it after your separation and you received the certificate after your separation.

The Applicant: Yes, sir.

The Counsel: In other words, after your separation you continued on a correspondence course basis and completed the course and received this certificate.

The Applicant: Yes, sir.

(The document referred to was marked "Applicant's Exhibit 3" and received in evidence.)

Mr. Pruitt: You did this at home after you were separated from the service; you continued to participate in the correspondence course.

The Applicant: Yes, sir, after I was—well, I did it while I was in prison.

Mr. Pruitt: I see.

By the Counsel:

Q. Now, while you were in the Air Force on your tour of duty, did you participate in any athletic activities? A. Yes, sir.

38 What athletic activities did you participate in? A. Football, basketball, and softball.

Q. Now, first as to football: Was this while you were in the Japan Theater of Operations? A. Yes, sir, it was.

Q. What did you refer to it as? A. Far East Command.

Q. The Far East Command. Did the team that you played on, the football team that you played on, win the championship of the Far East Command? A. Yes, sir, it did.

Q. Did they, then, choose an all-star football team of the Far East Command, and did you play on that team? A. Yes, sir, I did.

Q. Did you play post-season games on New Year's Day and on other days as a member of this Far East Command all-star team? A. Yes, sir.

Q. Did you receive a trophy in the course of your playing on this team? A. Yes, sir.

Q. And what kind of a trophy was that? A. Outstanding backfield.

Mr. Pruitt: What period was this?

The Applicant: January '54 to January '55.

Mr. Pruitt: Was this the Far East Air Force's team that you were playing with?

39 The Applicant: I was playing with FEAMCOM Marauders in January of '55. On December 17th, they organized an all-star team and played the championship and I was selected to play on the team. We had to play the playoff on January 1, '55.

Mr. Pruitt: In the major stadium?

The Applicant: Yes, sir.

By the Counsel:

Q. Did you also participate in softball activities in the Far East Command? A. No, sir, I didn't.

Q. Where did you participate in softball? A. Altus, Oklahoma.

Q. Did you receive a trophy for your playing on the softball team? A. Yes, sir, I did.

Q. Did you also participate in basketball? A. Yes, sir.

Q. Where did you participate in basketball? A. Altus, Oklahoma.

Q. Did you receive a trophy for playing on the basketball team? A. Yes, sir, I did.

Q. Did either the baseball or the basketball team win any championships or tournaments? A. Yes.

40 Q. Did they both? A. Yes, sir, both of them.

Q. At Altus, Oklahoma. A. Yes, sir.

Q. What other teams did the basketball and baseball teams play? A. We played on the base and with the different squadrons.

Q. On the base and with the different squadrons. Going back to your football in the Far East Command, were you up for rotation just before the all-star games in 1954 and 1955? A. Yes, sir, I was.

Q. Were you requested to defer your rotation so that you could stay and play in these all-star games? A. Yes, sir.

Q. And you did that? A. Yes, sir.

Q. Did you receive any citations while you were in the Air Force? A. Yes, sir, I did.

Q. Now, I want you to look at these gentlemen, Mr. Jackson, because they are interested in looking at you and forming an appraisal of you and I want you to look right up at them and answer these questions. What were these citations? A. Good Conduct Medal, Korean Service, National Defense, and UN.

41 Q. That is the UN Service Medal and the National Defense Service Medal.

Mr. Jackson, with reference to your personal, moral, and character side, I would like you to tell this Board if you smoke. A. No, sir.

Q. Do you drink? A. No, sir.

Q. Have you ever smoked or have you ever drunk? A. No, sir.

The Counsel: I might say on behalf of Applicant that the fact that maybe some of the members of the Board smoke, or may I smoke certainly should be considered no reflection. But I am trying to demonstrate to you that this is not an ordinary fellow. Here is a real high-type fellow, based on my contact and experience with him, and I was impressed with the fact that he did not smoke or did not drink.

Mr. Whalan: I am glad you are bringing these things out, Mr. Craig.

By the Counsel:

Q. Mr. Jackson, I want to go to the subject of the events preceding the discharge which you received on November 16, 1956, which was on the basis of a less-than-honorable discharge, or sometimes herein referred to as an undesirable discharge. Hade you just returned from
42 Thule, Greenland? A. Yes, sir.

Q. Incidentally, what theaters of operation had you participated in as a member of the Air Force? A. Alaska, Thule, Greenland, and Far East Command.

Mr. Whalan: Would you mind, Counsel, at this point bringing out approximately how long he served in each of these theaters.

By the Counsel:

Q. How long did you serve in the Far East Command? A. Twenty-two months.

Q. From when to when? A. From July of '53 to January of '55.

Q. How long did you serve in the Alaska Theater or Command? A. Ninety days, went TDY for ninety days.

Q. From what date to what date? What year? A. It was in '55.

Q. Then, what was the other one? A. Thule, Greenland.

Q. Greenland. How long were you in Thule, Greenland? A. July to September of '56.

Q. July to September 1956. A. That's right.

Q. Now, you had just returned to the Altus Air Base from Thule, Greenland, at the time the events occurred immediately preceding your discharge from the Air Force on November 16, 1956. A. Yes, sir.

43 Q. On October 29, 1956, were you returning by auto to the Altus Air Force Base with other Air Force personnel? A. Yes, sir.

Q. Was it late at night, after midnight or thereabouts? A. Yes, sir. It was five o'clock in the morning.

Q. What time? A. Five.

Q. Five o'clock in the morning. What time were you due back on base? A. Seven.

Q. Seven o'clock in the morning? A. Yes, sir.

Q. Was it a cold night? A. Yes, sir.

Q. While you were driving down the road did you see someone standing in the middle of the road in front of you? A. Yes, sir.

Q. Was that person flagging you down? A. Yes, sir.

Q. If you had kept on going, would you have run over this per[illegible]? A. Yes, sir, I would have.

Q. D[illegible] you stop? A. Yes, sir, I stopped.

Q. Did this person come up to your car and open
44 the door and get in? A. Yes, sir.

Q. Was it a girl? A. Yes, sir.

Q. What did she say she wanted? A. She wanted a ride into Altus, Oklahoma.

Q. This being a cold night, and this girl asking for a ride into town, did you, to do her a favor, drive her into town? A. Yes, sir.

Q. Now, when you got into town, did you need gas in the automobile? A. Yes, sir.

Q. Did you go to a service station to get gas? A. Yes, sir.

Q. What did you tell this girl when you were driving her into Altus, Oklahoma? A. I told her she had to get out the car before we get the gas because they didn't believe in this in Oklahoma.

Mr. Whalan: Didn't believe in what?

The Applicant: What was going on in Oklahoma, colored and white together.

By the Counsel.

Q. Was this girl a white girl? A. Yes, she was.

Q. What you have just said to the Board was that you told this girl because she was white and you were
45 colored that she would have to get out of the car when you got to Altus, Oklahoma, or you felt there would be some trouble. A. Yes, sir.

Q. When you got to the service station in Altus, Oklahoma, what—do you remember where the service station was? A. Yes, sir, I do.

Q. Where was it? A. It was on the corner of——

Q. (Interposing) Was it near the police station? A. It was about a block from the police station.

Q. Did you get gas there? A. Yes, sir.

Q. Did the girl get out of the car? A. Yes, sir. She got out a block from the filling station.

Mr. Pruitt: Prior to getting to the filling station?

The Applicant: Yes, sir.

By the Counsel:

Q. Then, when you were ready to drive off, did she come up again and say that she wanted you to drive her to the edge of town? A. No, sir. Before she got out the car she asked were we going out of town, and the fellow that owned the car—he was in the back seat asleep—he said yes, we were going out of town about five miles. And she said could she ride out that way; he told her yes. When we got the gas and come back——

46 Mr. Whalan (interposing): I thought you said he was asleep.

The Applicant: Yes, sir, he was asleep. There were two more boys in the car besides me.

Mr. Whalan: Was it he that gave permission for her to ride again?

The Applicant: Yes, sir.

Mr. Whalan: He must have wakened up, then.

The Applicant: Yes, sir, he woke up before she got out of the car.

Mr. Whalan: How many were in the car at the time?

The Applicant: Three of us.

Mr. Whalan: Three of you were in the car. You were driving the automobile?

The Applicant: Yes, sir.

Mr. Whalan: And the owner of the automobile was sleeping?

The Applicant: In the back, sleeping.

Mr. Whalan: Where did she sit when she first got in.

The Applicant: In the front.

Mr. Whalan: On the front seat, between you and the other fellow?

The Applicant: She was on the outside.

Mr. Whalan: She was on the outside nearest the door.

Mr. Pruitt: The other two occupants were Negro, too?

The Applicant: Sir?

47 Mr. Pruitt: The other two passengers in the car were Air Force personnel and they were Negro?

The Applicant: Yes, sir.

By the Counsel:

Q. Now, the owner of the car's name was Bennett, is that right? A. Yes, sir.

Q. And did he give permission to the girl to ride out to the edge of town after he got the car filled with gas? A. Yes, sir.

Q. Where were you driving the automobile? A. To James Riley's house.

Q. Was James Riley a cousin or some relative of Bennett, the owner of the car? A. Yes, sir, he was.

Q. And did Bennett want to leave the car in the yard of his relative, James Riley? A. Yes, sir.

Q. In other words, he did not keep the car on the base; he parked it with his relative, James Riley. A. Yes, sir.

Q. You were driving the car there at the request of Bennett, to leave it there? A. Yes, sir.

Q. Now, when you got there, did you park the
48 car in the James Riley yard? A. Yes, sir, I did.

Q. Did the girl say she wanted to find a place to stay that night? A. No, she didn't.

Q. You tell the Board. A. When we got to the house, I stopped. The girl and the two boys got out the car. They went on inside the house. I drove the car on around to the back, and just a little before I got out the car one of the boys come out the door and said they could stay here at this house for $2.00 all night. I said, "No. If you stay here all night with this young lady, you'll get us all in trouble."

Mr. Whalan: Who was it that said that to you?

The Applicant: Reese, a fellow name Reese.

Mr. Whalan: The fellow that owned the car or that owned the house?

The Applicant: The fellow in the front seat with me.

Mr. Whalan: All right.

The Applicant: I said, "No. You'll get us in trouble if you stay all night with the young lady." We had a taxi on the way to take us back to the base.

Mr. Whalan: You have already arranged for a taxi to pick you up before you left the service station?

The Applicant: No. When they went in the house, they called the taxi.

49 Mr. Whalan: Oh, I see. The taxi was on its way at that point?

The Applicant: Yes, sir.

Mr. Whalan: You all knew it was coming?

The Applicant: Yes, sir.

By the Counsel:

Q. Now, did the girl stay in the James Riley house that night—of course, it is morning by this time? A. As far as I know, she did.

Mr. Whalan: What time was that, Counsel, when they arrived at the Riley house?

The Applicant: About five-thirty.

Mr. Whalan: In the morning?

The Applicant: Yes, sir.

Mr. Whalan: Five-thirty in the morning. Do you mind if I interject a question here?

The Counsel: No, indeed.

Mr. Whalan: When the taxi arrived, did you or the other fellows get in the taxi?

The Applicant: We all went to the base.

Mr. Whalan: How about the girl?

The Applicant: The girl stayed there.

Mr. Whalan: The girl stayed there.

The Applicant: Yes, sir.

Mr. Whalan: How long was it after you arrived

50 at the house before your taxi arrived to pick you up?

The Applicant: About five or ten minutes. The taxi stand is not too far from the house.

Mr. Whalan: I see. It was only five or ten minutes before the taxi arrived. Was this taxi driven by a colored driver or a white driver?

The Applicant: White driver.

Mr. Whalan: I see. All right.

By the Counsel:

Q. Did you take the keys of the car into the house to leave them? A. Yes, I did.

Q. How long were you in the house? A. I would say about three or five minutes, long enough to take the key inside.

Q. Were you ever alone with this girl in the house? A. No, sir, I wasn't.

Q. Was James Riley, the owner of the house or proprietor of the house, present all the time you were in the house? A. Yes, sir, he was.

Q. Did you have sexual intercourse with this girl, whose name was Joy Herron—H-E-R-R-O-N—in the house or at any other time that evening? A. No, sir.

Q. You were only in the house from two to five
51 minutes? A. Yes, sir.

Q. Did you go out and get in the taxicab and go back to the Altus Air Force Base? A. Yes, sir.

Q. Did all the other Air Force personnel, everyone else who might have been with you—there were just Air Force personnel with you—get in the taxicab and go out to the base together? A. Yes, sir.

Q. None of the other boys stayed there? A. No, sir.

Q. Did Joy Herron ever accuse you of having sexual intercourse with her? A. No, sir.

Mr. Whalan: Could I interject a question there? To me, it is important.

The Counsel: Yes, sir.

Mr. Whalan: When did you last see—what's her name?

The Counsel: Joy Herron.

Mr. Whalan: Joy Herron.

The Applicant: That morning when we put her out the car.

Mr. Whalan: That is, after you got in the taxi, you never saw her again?

The Applicant: No, sir, I never did see her any more.

Mr. Whalan: Did you see her subsequent to that at all?

The Applicant: No, sir, never did.

52 Mr. Whalan: You were never confronted with her before you were arrested?

The Applicant: No, sir.

Mr. Whalan: You never talked with her after your arrest?

The Applicant: Never have.

Mr. Whalan: You have not seen her to this day since then?

The Applicant: I have never seen her.

The Counsel: I am going to go into that, Your Honor. It is very, very important; I agree with you.

Mr. Pruitt: Not even during the court trial?

The Applicant: Never did have court.

By the Counsel:

Q. Now, when did you get back to the Altus Air Force base approximately? A. I signed in at six o'clock.

Q. Did you remain on the base during that day? A. Yes, sir.

Q. When you were off duty, did you go back into Altus, Oklahoma? A. Yes, sir, I did.

Q. Did you go in to get a haircut and to pick up Mr. Bennett's car? A. Yes, sir.

53 Q. Did you get the haircut? A. Yes, sir.

Q. Did you go over to Mr. Riley's house to pick up Mr. Bennett's car? A. Yes, sir.

Q. Was Joy Herron there when you arrived? A. No, sir.

Q. About what time was that? A. About six o'clock in the evening.

Q. While you were there, did the Police Department of Altus come out and arrest you? A. Yes, sir.

Q. Did they arrest any of the other boys that were in the car that evening? A. No, sir.

Q. What did they say to you when they arrested you? A. They said, "I want to see you down at the——" Well, they come and asked me, they said, "I'm going to take you down to the City Hall and question you about the girl you put out the car this morning." I said, "Yes, sir." We went down there. I sat there for about a few minutes. The County Attorney come in and he asked me was I the driver of the car, and I said yes, I was. He said, "Tell me what happened." I said, "There's nothing to tell you. I just picked the girl up. She said she wanted a ride into town. I told her after she got in there she had to get out the car because they didn't believe in anything like this in Altus."

54 Q. Let me interrupt. When you say they didn't believe in a thing like that, you are saying to the

Board that what the Altus Police Department did not believe it was a white girl being in a car with a colored fellow. A. Yes, sir.

Q. Go ahead. A. He said, "Did you have sexual intercourse with her?" I said, "No, sir, I didn't." He said, "She said you did." I said, "She couldn't say that because I haven't seen her." He made the colored police go out. They were all going to jump on me——

Mr. Whalan (interposing): I didn't understand you.

The Applicant: He made the colored police go out the room, told him to go into another room. They all crowded around me; they were going to jump on me and make me say I had something to do with it.

Mr. Whalan: How many were there?

The Applicant: About six or seven.

Mr. Whalan: Six or seven. White officers and no colored officers?

The Applicant: No, sir.

Mr. Whalan: There had been colored officers? How many?

The Applicant: Just one.

Mr. Whalan: Did you hear him tell him to leave?

The Applicant: Yes, sir.

Mr. Whalan: What did he say?

55 The Applicant: He told him to go in the other room and wait a few minutes.

Mr. Whalan: I see. Go ahead.

By the Counsel:

Q. Did they attempt to arrest any of the other fellows with you that night? A. No, sir.

Q. Any comment about that? A. He said, "To hell with the other two fellows. So long as we've got you, we might as well put the rap on you. To hell with the other two fellows."

Mr. Whalan: Who said that?

The Applicant: The County Attorney.

Mr. Whalan: Was the County Attorney in this room at the time that you were brought back immediately after you had been arrested?

The Applicant: Yes, sir.

Mr. Whalan: Who was in the room—the County Attorney?

The Applicant: And the police.

Mr. Whalan: And several policemen.

The Applicant: Yes, sir.

Mr. Whalan: All right.

I am sorry to interrupt here, but there is a point that I think is pertinent in the case.

The Counsel: That is what I want you to do.

56 Mr. Whalan: About how long would you say this girl was in the automobile riding with you?

The Applicant: I would say about ten or fifteen minutes. We were about seven miles out of Altus, Oklahoma.

Mr. Whalan: Now, that would be from the time you left the service station to the time you arrived out at Riley's home.

The Applicant: I thought you meant from the time we picked her up to Altus.

Mr. Whalan: I want to get at the total time. I am just going to go back and calculate it.

The Applicant: We were about seven miles out from Altus, Oklahoma, when we picked her up.

Mr. Whalan: While she was in the automobile, you were driving the automobile.

The Applicant: Yes, sir.

Mr. Whalan: There was another fellow sitting between you and her?

The Applicant: Yes, sir.

Mr. Whalan: And she was sitting next to the door.

The Applicant: Next to the door, right-hand side.

Mr. Whalan: I know this has been a little while ago, but generally what was your line of conversation?

The Applicant: I wasn't talking at all. I don't hardly talk to nobody, and she wasn't doing no talking. She was just asking this other fellow where was he stationed at. That's all I remember.

57 Mr. Whalan: Did she ask you your name?

The Applicant: No, she didn't ask me my name.

Mr. Whalan: How long were you together in the house, in the Riley house?

The Applicant: Well, I didn't say anything to her.

Mr. Whalan: No. How long were you in the house there together?

The Applicant: I was in about two to five minutes, not over five minutes; long enough to give him the key to the fellow's car.

Mr. Whalan: I see. You were all dressed the same? Did you have your uniform on or were you in civilian clothes?

The Applicant: No, sir, uniform.

Mr. Whalan: You all had uniforms on.

The Applicant: Yes, sir.

Mr. Whalan: And she never asked you your name?

The Applicant: No, sir.

Mr. Whalan: After you were arrested, were you not ever confronted with this girl?

The Applicant: No, sir, I wasn't.

The Counsel: Never.

Mr. Pruitt: Let's let the Applicant tell us in his own words what transpired following your statement to the effect that the County Attorney said, "To hell with the other two; we've got you." What transpired at that time when the County Attorney and the several white
58 policemen were there.

The Applicant: Well, at that time when he said, "To hell with the other two; we might as well put the rap on you since you were the driver of the car" about that time the OSI man from the base walked in the door and they stopped. First, they tried to say I was taking the girl away. I didn't know she had run off from a girls' home. They tried to accuse me of running off with her. That is what they told the OSI man. He asked me the question when he come in and I said, "No. I was bringing her back from where she was running off from. I wasn't taking her away from nowhere." He said, well, that is what they told him; I was helping her escape from a girls' home. I said I never did.

Mr. Pruitt: What other questions did he ask you at that time?

The Applicant: He just asked me what had happened. I told him from the start, like I told the County Attorney. I picked her up out on the road. I told her when she got in the car she had to get out when we got in town because they didn't believe in colored and white being together.

He said, "What did you do then?" I said, "She got out a block from the filling station and hid behind a tree. When we got our gas, we come back, and she got back in the car and we took the car out where the fellow parks his car. We couldn't get him on the base because he didn't have insurance, didn't have enough insurance to get a
59 base sticker. That's where we stayed until two-thirty that evening; that's when the colored police turned me in, two-thirty that day."

Mr. Pruitt: How are you aware of the time?

The Applicant: Well, that's what they told me.

Mr. Pruitt: You have no personal knowledge of that?

The Applicant: No, sir, I have not.

Mr. Pruitt: Continue with what happened next after the OSI man came and after you related this to him.

The Applicant: They went into another room to talk it over. About twelve o'clock, they come and got me and carried me and put me in jail. I stayed in jail all night.

Mr. Pruitt: They did not turn you over to the military authorities?

The Applicant: Not then, until the next morning.

Mr. Pruitt: Continue to relate what happened next.

The Applicant: I went to jail that night at twelve o'clock and they locked me up, and about eight o'clock in the morning the military came and got me and put a $10,000 bond on me. They carried me down to the base and put me in the stockade. I stayed here until November 16th. They come out and gave me five years.

Mr. Pruitt: When were you arrested?

The Applicant: 29th of October.

Mr. Pruitt: Did you receive any brutal treatment duringthis time from anyone?

The Applicant: No, sir. Well, the two lieutenants
60 getting me out of the stockade, carrying me up to Altus, trying to get me to take the five years, he had talked it over with him to get me to take the five years for something I haven't did, and I told him no, I wasn't going to do it because I haven't did anything. About every other day they would come and get me trying to make me take the five years. On the 16th of November they come down and got me and carried me to town. That is when they carried me before the judge and the judge asked me how

I pleaded, and I said I'm not guilty. And the judge said let him get a lawyer or counsel. Instead of doing that, they carried me in the County Attorney's office, and the County Attorney said, "Well, you've got to take these five years because if you go to trial I am going to give you life or the electric chair. If I put this white girl on the stand and you being colored, you know what you're going to get." I said, "Well, let me talk to the girl. Let me talk to James Riley." They wouldn't let me talk to either one of them. They carried me back before the judge and they give me five years.

Mr. Pruitt: Did you plead guilty at any time?

The Applicant: No, I never did.

Mr. Pruitt: Is that consistent with what the records reflect?

The Counsel: Mr. Member of the Board, you have heard this just the way I have heard it. The record of the case in the Altus County Trial Court shows that he made a plea of guilty, but he maintains steadfastly what he
61 has said here. Now, this case, if I might make this statement, was appealed, after it happened, to the Supreme Court of the State of Oklahoma, or the Oklahoma Court of Appeals, I believe it is called, and the conviction was reversed because of this line of testimony and these statements which you are just hearing now. The conviction was reversed and set aside and the case was returned to the Trial Court at Altus, Oklahoma, for a new trial.

Mr. Whalan: That is a District Court, isn't it?

The Counsel: Yes, District Court.

Mr. Whalan: State District Court.

The Counsel: To the Altus State District Court for a new trial.

Mr. Pruitt: What has transpired since that time with regard to any court proceedings against him?

The Counsel: At that time——

Mr. Whalan (interposing): Determination was made that he did not have a case with which to proceed, in effect.

The Counsel: I want to get this over as substantially as possible. I came into the case at that point. The case had been set for new trial down in Altus, Oklahoma. And, again, they were saying to him, "You'd better plead guilty and take a year"—not five years; they cut it down from

five years to one year—"you'd better take a year because if you go to trial you are liable to get the electric chair or you are liable to get life."

Mr. Whalan: Did this occur before he was released?

62 The Counsel: Yes.

Mr. Whalan: While they still had him in custody.

The Counsel: Well, yes. So, when I came into the case I asked for permission to talk to the prosecuting witness, Joy Herron. I retained local counsel in Altus, Oklahoma. I just couldn't seem to make contact with this girl. My local counsel in Altus, Oklahoma, tried to get permission for me to go and interview this witness. They said she wasn't in Altus, Oklahoma; they said that she was in Mississippi. I said, "Fine! I'll go to Mississippi; wherever she is, I'll go there and see her." They never gave me her location or whereabouts. I contacted by long distance telephone the correctional home where she had been located before she ran away and was going down the highway when Mr. Jackson here first saw her. She was not there and they did not know where she was. I could not locate her through the County Attorney's office in Altus, Oklahoma, so there was no way I could locate her.

Mr. Whalan: Do you feel that they were deliberate in not furnishing you her whereabouts?

The Counsel: I don't know. I don't know whether they knew she would not testify that this man had had sexual relations with her and they would have no case, or what: That is merely conjecture on my part. But I then recommended to Mr. Jackson that we go to trial in this case rather than take a plea and get a one-year sentence because that would do what has happened any way—made it impossible for him to get employment in the field

63 for which he is qualified and become experienced by reason of his life in the Air Force and would have kept him from going back into the Air Force. To me, it looked like he ought to go all or nothing; either he was going to win it or lose it. So, we made the decision, Mr. Jackson made the decision he would go to trial. The case was set for trial, we were all set to go down there, and——

Mr. Pruitt (interposing): What is the timing of this, roughly?

The Counsel: The Dismissal is dated May 6, 1958. So, it would be several months before that, in the early part of 1958. We got up to the date of trial, we said we would be ready for trial, and we got "under the gun," and the State dismissed the case.

Mr. Whalan: That was on the basis of insufficient evidence, was it?

The Counsel: That was based upon insufficient evidence. (Reading): "It Is, Therefore, Ordered, Adjudged and Decreed by this court that this cause be, and the same is hereby dismissed for the reason that the facts and evidence are not sufficient upon which to base a conviction or prove the defendant guilty beyond a reasonable doubt." Now, whether they could produce the witness and she would not testify, putting the blame on this man, or whether they could, I don't know. We have never found that out.

Mr. Pruitt: I assume that that paper Mr. Craig is reading from is already a part of the file.

Mr. Whalan: Yes.

64 Mr. Hardin: Yes, sir.

By the Counsel:

Q. Mr. Jackson, was the case against you for the rape of Joy Herron filed in the District Court for Jackson County, Oklahoma, Case No. 1943, dismissed on May 6, 1958? A. Yes, sir.

The Counsel: There has already been submitted to this Board a certified copy of this Order of Dismissal, which is in the file.

By the Counsel:

Q. Just one more point to have in the record.

Mr. Whalan: This information is very helpful to the Board, Mr. Craig.

By the Counsel (continuing):

Q. Were you put in fear of your life and limb during the time that you were in custody and had been arrested by the Police Department and the county authorities in Altus, Oklahoma? A. Yes, sir, I was.

But in spite of that you still maintain that you did not plead guilty? A. Yes, sir.

Q. But that a plea of guilty was entered and then upon an appeal to the higher court in Oklahoma that conviction was reversed. A. Yes, sir.

Q. And returned to the Trial Court of Jackson
65 County, Oklahoma, for new trial. A. Yes, sir.

Q. Did you have a lawyer of your own prior to the conviction? A. No, sir.

Q. It was only after the conviction and the appeal to the higher court that you had a lawyer? A. Yes, sir.

Q. That lawyer was not me. A. No.

Mr. Pruitt: Were you offered legal assistance by the Air Force?

The Applicant: No, sir, I never was.

Mr. Whalan: The JAG officers came down and visited you, I believe, according to the record, isn't that right—Judge Advocate General's officer from the base?

The Applicant: I think it was two lieutenants.

Mr. Whalan: Two lieutenants.

The Applicant: Yes, sir.

Mr. Whalan: When was it they came down to visit with you?

The Applicant: Well, they come and visited me in the stockade.

Mr. Whalan: After you had been sentenced, convicted and——

66 The Applicant (interposing): Just before I got sentenced, they was coming down trying to get me to take the five years. But they wasn't trying to help me; they were trying to get me to take the five years.

Mr. Whalan: They wanted you to take the five years?

The Applicant: Yes, sir.

Mr. Whalan: Did they offer to assist you in a defense if you pled not guilty?

The Applicant: No, sir, they never did.

Mr. Whalan: They did not?

The Applicant: No, sir.

Mr. Whalan: What did they say to you, in effect?

The Applicant: They said if you was in my hometown—I think he was from Ohio—he said—they would never have considered nothing like this, but since you're in Altus, Oklahoma, it's best for you to go and take the five years. He said he'd write clemency for two years and you'd be

out and everything would be all right. I said no, I don't want no five years because I never did anything.

Mr. Whalan: Did you explain to them that you had not touched this girl?

The Applicant: Yes, sir, I explained to them.

Mr. Whalan: Did you tell them that in your own mind you did not feel guilty?

The Applicant: Yes, sir.

Mr. Whalan: How often did those officers visit with you?

67 The Applicant: They would send for me about every other day. I had to go out there. The Air Police would take me out.

Mr. Whalan: About every other day. Over how long a period of time?

The Applicant: Clean up until I got my five years.

Mr. Whalan: Did you ever see anyone in that office they took you to other than the two lieutenants?

The Applicant: No, sir, no one, just the major—you know, the secretary, when you go out to see him.

Mr. Whalan: Do you know whether they were attorneys or not?

The Applicant: They said they did their practicing outside before they come in the service. They hadn't been in the service for about six months or eight months.

Mr. Whalan: Did both of them advise you to plead guilty?

The Applicant: Yes, sir, both of them.

Mr. Whalan: They did not offer to assist you?

The Applicant: No, sir, they didn't.

Mr. Whalan: Did they appear at the time of your trial?

The Applicant: No, sir, they carried me down that Friday morning.

Mr. Whalan: The JAG attorneys?

The Applicant: Yes, sir.

Mr. Whalan: Or the OSI, or who?

68 The Applicant: No, just the two lieutenants—attorneys, I guess they were. They said, "You'd better take the five years." Before I went to the judge, I told the judge I wasn't guilty. The judge said, "Let him get legal counsel." But instead of them taking me back to the base, they carried me in the County Attorney's office, and that is where the County Attorney said, "If you don't

take the five years when I put you on the witness stand before the jury, they're going to give you what I want them to give you." He said, "When they select the jury, I know half the jury, and if I say five years or life imprisonment, that's just what you'll get by her being a white girl and you a colored boy."

Mr. Whalan: Mr. Hardin, does the record show the names of the two JAG attorneys?

Mr. Hardin: Lieutenant Eckert and Lieutenant Walter, I believe.

The Applicant: Yes, sir.

Mr. Hardin: There was also a Mr. Carr. Was he your civilian attorney at that time?

The Applicant: I asked him to come out and talk to me two days after I was in the stockade.

Mr. Pruitt: What was his advice?

The Applicant: He hadn't been into the case yet, but he told me there wasn't nothing to it. He didn't see where they could get me. He went to town and he never did come back out; he couldn't come back. We was on base
69 alert and he couldn't come back out.

Mr. Whalan: Was he a local attorney?

The Applicant: He was in town.

Mr. Whalan: You say he couldn't come out to the base?

The Applicant: No, sir, because he was on base alert, or something, and they wouldn't let him come out.

Mr. Whalan: On Sunday?

The Applicant: No, sir. We was on base alert.

Mr. Pruitt: Base alert.

Mr. Whalan: Where was it that you first talked with him?

The Applicant: It was on the base.

Mr. Whalan: It was on the base?

The Applicant: Yes, sir.

Mr. Whalan: How did he come to come out to see you?

The Applicant: I asked, I think it was my CO, I asked him to tell him to come out to see me, and he said the people in Altus didn't think nothing about it. He said he didn't think it was going to amount to anything. When he didn't show up no more, I didn't think it was going to be anything either. Then on 16 November they come and got me and gave me five years. They set my trial down for

the 19th of November. Well, he give me five years on the 16th, on a Friday.

Mr. Whalan: Let me back up a little bit. Do I understand correctly that you had the impression from your discussion with Attorney Carr that he did not think
70 that charges would be brought against you, is that right?

The Applicant: Yes, sir.

Mr. Whalan: Do you suppose that is why he never came back to see you?

The Applicant: Well, I guess so. I presume so.

Mr. Whalan: Did you discuss fees with him?

The Applicant: No, sir, I never did.

Mr. Whalan: So, there was no problem so far as your not being willing to pay him for his services.

The Applicant: No, sir.

Mr. Pruitt: Did you get a bill from this attorney?

The Applicant: No, sir, I never did.

Mr. Whalan: Did you seem to get along with him all right during your discussions?

The Applicant: Yes, sir.

Mr. Whalan: Was he friendly with you?

The Applicant: Yes, sir, he was.

Mr. Whalan: Do we know whether the two lieutenants are still in the service?

Mr. Hardin: I don't know.

By the Counsel:

Q. Mr. Jackson, the lawyer that you did hire to represent you when the case was taken up to the higher court in Oklahoma was whom? A. Amos T. Hall.
71 Of what city? A. Tulsa, Oklahoma.

(Whereupon, at 12:15 o'clock, a short recess was taken. Upon reconvening at 12:25 o'clock, the following transpired:)

Mr. Whalan: The Board will commence the hearing.

By the Counsel:

Q. Mr. Jackson, I would like to have you tell this Board just how you feel about the Air Force. A. I was proud of the Air Force. I would like to be reinstated and stay in.

Q. Did you intend and do you now want to make the Air Force your career in life? A. Yes, sir, I do.

Q. Were you proud to be a member of the Air Force? A. Yes, sir.

Q. And if you are reinstated, will you be proud to be a part of the Air Force? A. Yes, sir.

Q. Will it be your intention to remain in the Air Force? A. Yes, sir.

Q. I would like to have you tell this Board something about the problems you have experienced with reference to trying to obtain employment even though this case was dismissed of record against you down in Altus, Oklahoma. Did you take any Civil Service examinations? A. Yes, sir.

72 Q. Did you take a Civil Service examination with reference to the position of Supply Specialist, which was very close if not the same type of work you were doing in the Air Force? A. Yes, sir.

Q. I hand you what has been marked "Applicant's Exhibit 4," being Civil Service Commission Notice of Rating 8016, dated November 14, 1958, showing that you were marked "Ineligible" as a General Supply GS-7, is that correct? A. Yes, sir.

The Counsel: We offer "Applicant's Exhibit 4" into evidence.

(The document referred to was marked "Applicant's Exhibit 4" and received in evidence.)

Mr. Whalan: This could mean that he was ineligible because he did not have the necessary qualification requirements.

The Counsel: I am going to follow that up. They say he was eligible and then after he got on the job they took him off.

Mr. Whalan: All right; good.

The Counsel: I thought I would put them all in.

By the Counsel:

Q. I hand you what has been marked "Applicant's Exhibit 5," being a Civil Service Notice of Rating for the position of General Supply Officer, which is the same or similar work which you were doing in the Air Force

73 (handing document to Applicant). A. Yes, sir.

Q. Which Notice of Rating is dated October 17, 1958, and it shows thereon that you have been marked "Ineligible" for GS-6, is that right? A. Yes, sir.

The Counsel: Applicant offers "Applicant's Exhibit 5" into evidence.

(The document referred to was marked "Applicant's Exhibit 5" and received in evidence.)

By the Counsel:

Q. When you were marked "Ineligible" for the two types of work you had been doing in the Air Force, namely, General Supply Officer and——

Mr. Pruitt (interposing): Supply Specialist.

Q. (continuing)—Supply Specialist, did you take some Civil Service examinations for some other type of work? A. Yes, sir.

Q. Particularly one for a Postal Transportation Clerk. A. Yes, sir.

Q. I hand you herewith what has been marked "Applicant's Exhibit 6," being No. 528061, dated February 12, 1959, being Notice of Rating for position of Postal Transportation Clerk, from the U. S. Civil Service Commission, showing that you have been marked "Eligible" for this work with a numerical rating of 78.8. Did you re-
74 ceive that rating? A. Yes, sir.

Q. Did you go to work on that job? A. No, sir, I didn't.

Q. What happened after you were advised that you were eligible? A. They said I had to have an Honorable Discharge to go to work down there.

Q. And because you did not have an Honorable Discharge you could not get the job. A. Yes, sir.

The Counsel: "Applicant's Exhibit 6" is offered into evidence.

(The document referred to was marked "Applicant's Exhibit 6" and received in evidence.)

By the Counsel:

Q. I direct your attention to the fact that this was dated in February of 1959 and the dismissal of the case against you was dated May 6, 1948. (Handing document to Appli-

cant) I hand you herewith what has been marked "Applicant's Exhibit 7," being U. S. Civil Service Notice of Rating No. 525623, and also there is a No. 428888 in pencil, dated February 17, 1959, having to do with the position of Office Machine Operator, showing you as marked as "Eligible" with a numerical rating of A-85.00. Did you receive that rating? A. Yes, sir.

75 Q. Did you go to work on the job? A. Yes, sir.

Q. When did you go to work on the job, about? A. End of April of '59, when I was discharged in May of '59.

Q. May of '59? A. Yes, sir.

Q. Was any explanation given for your discharge? A. I just heard around in the office from some of the people that they heard I had an undesirable discharge, and I quit.

Mr. Pruitt: What Federal agency was this?

The Applicant: Internal Revenue.

Mr. Pruitt: Where?

The Applicant: Eighth and Grand, Kansas City, Missouri.

Mr. Pruitt: Kansas City?

The Applicant: Yes, sir.

The Counsel: Applicant offers into evidence Exhibit 7.

(The document referred to was marked "Applicant's Exhibit 7" and received in evidence.)

Mr. Pruitt: May I ask a question; perhaps you are coming to this. Did you receive a formal notice of discharge from the Internal Revenue?

The Applicant: No, sir, I did not.

The Counsel: No, sir, not in this case.

76 Mr. Pruitt: You do not recall getting any piece of paper from Internal Revenue which indicated you were being separated from the service because of the fact that you had an Undesirable Discharge?

The Applicant: No, sir, I quit before they got to that.

Mr. Pruitt: You submitted a resignation under duress?

The Applicant: Yes. I just said I was moving to Oklahoma in order for them not to discharge me on that kind of a charge.

The Counsel: Mr. Jackson, you thought you were going to be discharged and you did not want to be discharged

so you said you were going to move out of town and submitted your resignation, is that right?

The Applicant: Yes, sir.

Mr. Whalan: Had you falsified any Government papers with respect to the type of discharge you had in order to get the job or afterwards?

The Applicant: I never did put it on there because I wasn't guilty, so I didn't put it on the first time. I put the trouble on there and they sent back all the papers and said I wasn't eligible. Then, I took them over and passed, provided they wouldn't put the charge against me on there.

Mr. Whalan: What did you do, then, just leave the space blank that called for the type of discharge?

The Applicant: Yes, sir.

Mr. Whalan: And you were not questioned about it?

77 The Applicant: No, sir, I wasn't.

Mr. Whalan: How did it come to your attention that you were going to be separated?

The Applicant: Some of the people in the office was talking about it.

Mr. Whalan: Did they say why?

The Applicant: No, sir, they didn't say why. I just went on and put in my resignation that I was moving to Oklahoma.

Mr. Whalan: Why did you think they were going to separate you?

The Applicant: By me having that bad discharge, I know it, that they were going to discharge me.

Mr. Pruitt: On every application for Federal employment there is a question having to do with any prior Federal service, either civiliar or military. How did you answer the question with regard to military service?

The Applicant: I put my good time on there, and that was all—the two Honorable Discharges.

Mr. Pruitt: Your two Honorable Discharges.

The Applicant: Right.

Mr. Pruitt: You did not reflect anything about the Undesirable Discharge?

The Applicant: No, sir, I didn't. At first I did. I wrote just how they did me in court, and everything, and they

sent them all back uneligible. The first two they
78 got they sent them back and said I wasn't eligible.
Then I went down and taken them again but I didn't put it on there. So, I come back and I passed them all; they sent them back the second time.

Mr. Pruitt: At the time you did this you recognized that this was not the whole truth.

The Applicant: Yes, sir.

Mr. Pruitt: What was your answer?

The Applicant: Yes, sir.

Mr. Pruitt You did so recognize.

The Applicant: I did.

The Counsel: Mr. Jackson, you just left the space blank. You didn't say you had an Honorable Discharge, or you did not say you had a less than Honorable Discharge in this case. You just left the space blank.

Mr. Pruitt: That was not my understanding. I think it amounts to essentially the same. But if I understand you correctly, you listed your two periods of acceptable service, from which you got Honorable Discharges, and you omitted that portion of your service where it wound up with an Undesirable Discharge.

The Applicant: Yes, sir. On the first test I took, I just wrote on a separate sheet of paper what I had in court and everything, and I took the test and when they mailed it back I didn't have a rating.

Mr. Pruitt: I understand what transpired. I think
79 I am clear now as to what did transpire.

Mr. Whalan: You see, what you did here, Mr. Jackson, actually was to falsify by omission, and this raises a question as to how far you would carry that; in other words, a question of honesty. I realize that you will find it difficult to find a job. I know why you say you did it. But this does indicate a weakness of character. Would you care to speak to this point?

The Applicant: Well, sir, at first I was honest about the deal.

Mr. Whalan: I understand that; but then later on you weren't. I would like you to tell us why.

The Applicant: I was honest both ways about it. After the case was dismissed against me, I figured I should be entitled to a job.

Mr. Pruitt: I am not trying to put words in your mouth. I think I grasp your thinking. At the time you filled out the later applications where you omitted your military service, do I understand correctly that that was after you had received word from the courts in Oklahoma that the case was dismissed?

The Applicant: Yes, sir.

Mr. Pruitt: But you actually recognized that it was at least technically wrong to omit a portion of your military service from your application for Federal employment.

The Applicant: Yes, sir.

Mr. Pruitt: I gather that you feel it was not mor-
80 ally wrong by virtue of the fact that the charges upon which your removal from military service was based had been thrown out of court.

The Applicant: Yes, sir.

The Counsel: On this point, I would like to say in behalf of Mr. Jackson that he is not a man of great education and one who understands the legal effect of the dismissal of the case against him. The fact that there still was a charge originally, which was subsequently released, in his own mind he felt as long as the case against him was dismissed, was reversed by a higher court in Oklahoma, and then dismissed against him by the lower court, that actually there wasn't any case against him; a court had so held. I think there is substantial weight to his thinking, basically, that a higher court of Oklahoma having reversed the conviction and then the lower court dismissing the case, in effect, he felt there was no case against him.

Mr. Pruitt: I could see that line of thinking. However, according to his own testimony, he does recognize that it was at least technically wrong to omit from the application for Federal employment the period of military service which resulted in an Undesirable Discharge.

By the Counsel:

Q. Didn't you include the period of military service up to the time of your discharge? A. Yes, I did.

81 Q. He included the full military service up to the date of his discharge. In a blank space there where it says the type of discharge, you just left that blank, is that right? A. I left it blank, yes, sir.

Mr. Whalan: You did not on any occasion or on any forms put an Honorable Discharge, then?

The Applicant: No, sir, I never did.

Mr. Whalan: You are sure of that?

The Applicant: Yes, sir, I am sure of that.

Mr. Pruitt: I don't know whether this is too essential or not, but let us see if we can get it clearly in mind. It was my understanding that in your application for Federal employment for the last position you recorded your two periods of good service and omitted the period that resulted in an Undesirable Discharge. Is that correct, or did you give your full period of service and just leave the application blank as far as the type of discharge?

The Applicant: Yes, sir, that is what I did.

Mr. Pruitt: The latter?

The Applicant: Yes, sir, that's what I did. Ordinarily, they give you an extra sheet of paper to put down Item No. 39, which is have you ever been in court, or in prison, or something like that. They give you another piece to write on the back of that, to fill out the statement, but I didn't do that.

Mr. Pruitt: Oh, you omitted that part.

The Applicant: Yes, sir.

82 Mr. Pruitt: I guess I am clear now. I had a misunderstanding earlier. Insofar as your record of military service on this last application that you filled out, you gave your full period of military service.

The Applicant: Yes, sir.

Mr. Pruitt: And showed all of the inclusive dates of all of it.

The Applicant: Yes, sir.

Mr. Pruitt: But just left blank the type of discharge.

The Applicant: Yes, sir, I did. You see, on Item No. 39 it asks you how much prior service you had, and I said from January of '51 to November 24, 1956.

The Counsel: November 24, 1956, was the date of your discharge from the Air Force on a less-than-honorable basis.

The Applicant: Yes, sir.

The Counsel: In other words, he had the full service up to the date of his discharge, November 24, 1956.

By the Counsel:

Q. Mr. Jackson, have you within the past two weeks been able to get a job? A. Yes, sir.

Q. And where are you now working? A. United Film Service.

Mr. Pruitt: United what Service?

The Applicant: Film.

83 The Counsel: United Film Service. Are they in Kansas City?

The Applicant: Yes, sir, 2449 Charlotte.

The Counsel: Is that Kansas City, Missouri?

The Applicant: Yes, sir.

By the Counsel:

Q. Now, even though you have been able to get this job, is it your desire, if possible, to get back in the Air Force? A. Yes, sir.

Q. That is where you want to be and that is where you want to make a career out of your life? A. Yes, sir.

Mr. Pruitt: What did you tell the United Film Service with regard to any questions, either orally or in writing, about your past military service?

The Applicant: Well, I went down just temporary for three days to work in another fellow's place. Then, after they liked my work, they just kept me on. They haven't asked any questions yet about my discharge.

Mr. Pruitt: You have not been queried about the nature of your discharge?

The Applicant: No, sir.

Mr. Whalan: Does your employer know why you are absent from work?

The Applicant: I told him I have to go to Wash-
84 ington on some business. He will probably ask me when I get back why I was out.

Mr. Whalan: What are you going to tell him?

The Applicant: I am going to tell him the truth, like I always tell the rest of them.

Mr. Whalan: Even though you may lose your job as a result of it?

The Applicant: Yes, sir.

The Counsel: I would also like to direct the att. ..n of the Board to the fact that in the service record of Mr.

Jackson, on October 9, 1951, there is a notation on Character, which is marked "Excellent." Efficiency, which is marked "Excellent," and that he was cleared for security work of a SECRET classification.

Mr. Whalan: Do you happen to remember the date on that?

The Counsel: October 9, 1951 was the Character and Efficiency classification. The security questionnaire was on a different page. I did not write down the date of that but he was cleared for SECRET work.

Mr. Whalan: That is all right.

The Counsel: That completes the submission of information on behalf of the Applicant, unless the Board has any other questions they would like to ask.

Mr. Pruitt: In your applications for employment since being separated from the service, are there any other instances, either by omission or direct answers to questions, where you have given inaccurate information?

85

The Applicant: No, sir. Every job I have I told the truth. My sister and them are dinging at me now because I can't get no work and me being a care on them. I just tell them, when I tell them about my bad discharge, they don't believe me. They are all angry at me now because they say you don't want to work. I tell them I can't work on account of my discharge.

Mr. Pruitt: I don't think I have anything further.

Mr. Whalan: In reading through a report on your case, in the *Pacific Reporter*, it is noted that you had admitted having laid on a bed with the girl in question, but fully clothed; and that you had denied that you had had any relationship with her. When did this occur?

The Applicant: I never did say I was on the bed with the young lady.

Mr. Whalan: Do you know what I am referring to, Counsel?

The Counsel: Yes, sir.

Mr. Whalan: Have you explored this with the subject?

The Counsel: Yes, sir. Mr. Jackson denies it completely.

Mr. Whalan: Do you know how this statement could come about?

The Applicant: No, sir, I don't.

Mr. Whalan: This is one thing that puzzles me, frankly. The Court even went so far as to point out that it
86 seemed incredible under the circumstances that you might have laid on the bed with this girl and that nothing took place, according to what you had said. Now, you deny absolutely ever having laid on a bed with this girl?

The Applicant: No, I never did.

Mr. Whalan: Either clothed or otherwise?

The Applicant: I never did.

Mr. Pruitt: Give me the date of your marriage, if you will, please.

The Applicant: I was married in May of 1953.

Mr. Pruitt: May of 1953.

The Applicant: Just a little before I went overseas.

The Counsel: Just before he went overseas.

Mr. Pruitt: Are you still living with your wife?

The Applicant: No, sir, we are separated, divorced.

Mr. Pruitt: At what point in time were you separated?

The Applicant: In January of this year.

Mr. Pruitt: In January of this year.

The Applicant: Yes, sir.

Mr. Pruitt: At the time of the incident in question here, were you still living with your wife?

The Applicant: I just had left my wife.

Mr. Pruitt: You had just left your wife?

The Applicant: Yes, sir.

87 Mr. Pruitt: This was shortly after the return from Greenland?

The Applicant: Yes, sir.

Mr. Pruitt: How long had you been back from Greenland?

The Applicant: I would say about two weeks.

Mr. Pruit: Had you had any leave?

The Applicant: Yes, sir. They always give us a three-day pass on the weekend. Let's say we got back on Wednesday, well, we had off until Monday.

Mr. Pruitt: You were living with your wife at that time?

The Applicant: I just had left my wife at that time. We left home about twelve o'clock, left Oklahoma City about twelve o'clock at night.

The Counsel: Your wife was living in Oklahoma City, then.

The Applicant: No, she was living in Guthrie, Oklahoma. I would catch the bus to Oklahoma City and I caught a ride with this fellow to the base.

Mr. Pruitt: Did any of the other soldiers have sexual intercourse with this Miss Herron?

The Applicant: No, sir, unless they went back to the house after we went to the base. I don't have no idea.

Mr. Whalan: Well, if you saw them subsequently, you surely would have heard or talked to them about it if this had happened.

The Applicant: No, sir, we were in different squadrons.

88 Mr. Whalan: Didn't you see them after that?

The Applicant: I never did see none of them after that.

Mr. Pruitt: Were you well acquainted with these three men that were in the car with you?

The Applicant: We had been—Reese, that was the first time I saw him, the fellow sitting up in the front seat with me, and the fellow who owned the car, we ride back and forth together. He drives his car and I drive mine sometimes.

Mr. Whalan: And you never saw him after you were arrested?

The Applicant: Neither one of them.

Mr. Whalan: Until this day, you haven't seen hmi?

Mr. Whalan: Until this day, you haven't seen him?

Mr. Whalan: He never called on you?

The Applicant: No, sir. My CO got a statement from Reese saying where he asked the man for a room at this roominghouse. I have that statement; it's in the records. But I never did see him after that.

Mr. Pruitt: This roominghouse, was this Riley's home?

The Applicant: Yes, sir. That was my first time being there. I didn't know what was going on in there.

Mr. Pruitt: Was it a roominghouse or——

The Applicant (interposing): I don't know. They gamble and sell whiskey. I don't know what kind of house it was.

Mr. Pruitt: You said they did these things or you
89 don't know.

The Applicant: They did those things there, but it was my first time being there. So far as a roominghouse,

I don't know; but I know they drank and gambled there.

The Counsel: Had you ever been to that house before that night?

The Applicant: No, sir.

Mr. Pruitt: Were you getting along well with your wife at this time?

The Applicant: Yes, sir, I was.

Mr. Pruitt: Did you have sexual relations with your wife during this period? That may be a very personal question, but there is a reason for it.

The Applicant: Yes, sir, I had sexual relations before I left.

Mr. Pruitt: I don't think I have any further questions, Jack.

Mr. Whalan: If the police had bothered and had been willing to go to the trouble they could have charted the time that you left the service station and compared the time that the cab picked you up. That information would have been readily available to them at the time to determine whether or not you actually had opportunity. From what you say, I would gather you wouldn't have had an opportunity hardly to have had sexual relationship had you wanted to. Was this ever discussed with you? Did they ever present you with the fact that you left the service station at such and such a time and that the cab did not stop to pick you up until such and such a time and that you could have done it? Did they present you with that sort of questioning?

The Applicant: They asked the filling station man was there a girl in the car and he told them no. They asked the cab driver what time he carried me to the base, and he told them just what time. I couldn't have had any sexual relationship with the young lady because they asked him and they all told him just what time and how many went back to the base in the cab.

Mr. Whalan: Were you present when the cab driver was asked these questions?

The Applicant: No, I wasn't there.

Mr. Whalan: You were not there.

The Applicant: No, sir.

Mr. Whalan: Do you know whether or not Riley's home was used as a motel?

The Applicant: They had trouble out of Mr. Riley for that.

Mr. Whalan: They had what?

The Applicant: Trouble out of Mr. Riley.

Mr. Whalan: I did not get that.

The Applicant: Trouble. You know——

The Counsel (interposing): They had trouble with Mr. Riley. He is saying they had trouble with——

Mr. Whalan (interposing): The authorities?

91 The Counsel: The city authorities had trouble with Mr. Riley?

The Applicant: The people on the base were trying to get him out of business.

Mr. Whalan: Did he keep girls there, do you know?

The Applicant: Well, sometimes, yes, sir.

Mr. Whalan: Sometimes. Were they colored girls or white girls, according to reputation?

The Applicant: Both.

Mr. Whalan: According to this *Pacific Reporter*, as I recall, there is a statement to the effect that this girl had asked you, while she was still in the automobile with you, to take her to a colored roominghouse or a hotel.

The Applicant: No, sir, it wasn't me.

Mr. Whalan: Do you know anything about that?

The Applicant: It was the other fellow.

Mr. Whalan: She asked the other fellow?

The Applicant: Yes, sir.

Mr. Whalan: And what did she say or ask him?

The Applicant: That's taking place in the house. That is when he come out the back door and said he could stay with the young lady here for $2.00. That is when I told him no, if he stayed with this young lady he'd get both of us in trouble, all of us in trouble.

Mr. Whalan: Oh, it was this other fellow, then——

92 The Applicant (interposing): Reese.

Mr. Whalan (continuing): —that wanted to stay with her.

The Applicant: With the young lady, and I stopped him from staying.

Mr. Whalan: And this was while you were in the car the conversation took place, or after you got out?

The Applicant: I had parked the car in the back of his house. When I stopped in front of the house, they got out

and went inside. I drove the car around to the back and parked it.

Mr. Whalan: Did you hear him proposition her?

The Applicant: No. All of this took place in the house.

Mr. Whalan: All this took place in the house. How did you first know, then, that he wanted to stay there?

The Applicant: That is when he come out the back door and told me.

Mr. Whalan: That he was going to stay?

The Applicant: That he wanted to stay for $2.00; that Riley would let him stay here for $2.00 a night.

Mr. Whalan: And you told him what?

The Applicant: I said no, if you stay with the young lady, you'll get us all in trouble.

Mr. Whalan: Now, I want you to remember you are under oath when you tell me this; this is very vital to your application.

93 The Applicant: Yes, sir. I told them the same thing; it's in the record. I told them the same thing. They got a statement from him saying he said that.

Mr. Whalan: Did you at any time that you were in the presence of this girl approach her in any way with respect to having relationship with her?

The Applicant: No, sir, I never did. I never have talked to the lady.

Mr. Whalan: Did you make a pass at her?

The Applicant: No, sir.

Mr. Whalan: Aside from the arrest and conviction concerning the case about which we are now talking, have you ever been arrested?

The Applicant: No—maybe for child support.

Mr. Whalan: Maybe? This is something you know about, certanly, whether you have been arrested.

The Applicant: For child support.

Mr. Whalan: Child support. When was that?

The Applicant: This year.

Applicant: This year—last year on account I didn't—I had a $30.00 allotment going to her from the Government since I've been out. She's been having me arrested every time and picked up because I don't have the money.

Mr. Whalan: Your wife continues to receive this?

The Applicant: It is not my wife.

Mr. Whalan: Your child?

94 The Applicant: Yes, sir.

Mr. Whalan: Are you divorced now?

The Applicant: Yes, sir.

Mr. Whalan: You are divorced. And you have had no arrests, then, except this one about which we have spoken here today?

The Applicant: That's all.

Mr. Whalan: During the time of your trial in the District Court, did the judge ask you if you wanted to be represented by counsel, by an attorney?

The Applicant: I never had a trial. I never had a trial.

Mr. Whalen: Well, will you explain to us now just what happened.

The Applicant: Well, they come and got me that Friday, the 16th of November.

Mr. Whalan: From the jail?

The Applicant: From the stockade.

Mr. Whalan: Right.

The Applicant: Carried me to town, put me before the judge and the judge asked me how I pleaded and I said not guilty.

Mr. Whalan: All right, now, just a minute. Where did this take place? Was this in a courtroom?

The Applicant: Yes, this was in a courtroom.

Mr. Whalan: It was in a courtroom. Were there

95 other people——

The Applicant (interposing): Nobody there but the judge, County Attorney, the two lieutenants, and myself.

Mr. Whalan: The two lieutenants, the two JAG Air Force officers?

The Applicant: Yes, sir.

Mr. Whalan: They were present at the time?

The Applicant: Yes, sir.

Mr. Whalan: Was there a reporter such as this gentleman taking notes?

The Applicant: I didn't see none.

Mr. Whalan: And what transpired? When you first came into this courtroom, now, what took place?

The Applicant: The judge set down and he carried me up in front, and he grabbed me by one arm—the two lieutenants had me both by one arm.

Mr. Whalan: You mean by "carried" helped you up there, assisted you, or——

The Applicant (interposing): Yes, sir. It was just like the desk there setting kind of high and I was standing over this way. The two lieutenants and Mr. Rutherford—that's the County Attorney, he was standing there—well, he said, "Bring the gentleman forward." He grabbed me, you know, by one hand and one ear and I was in the middle. He asked me how I pleaded and I said not guilty. He said, "Well, let the young man get him some legal
96 counsel." They carried me in the County Attorney's office.

Mr. Whalan: Now, who said, "Let the young man get a counsel?"

The Applicant: The judge.

Mr. Whalan: And then they took you into the Attorney General's office. Wasn't he there at the time?

The Applicant: County Attorney's office.

Mr. Whalan: County Attorney. Wasn't he in the courtroom at the time?

The Applicant: The County Attorney?

Mr. Whalan: Yes.

The Applicant: Yes, he was standing on the side of the lieutenant.

Mr. Whelan: All right, then, what did he say?

The Applicant: He didn't say anything. Then they carried me in his office, went out from the courtroom.

Mr. Whelan: You left the courtroom?

The Applicant: Yes, sir, and went in his office.

Mr. Whalan: Had a sentence been pronounced?

The Applicant: Not then it hadn't.

Mr. Whalan: Not then. All right. So, then, you went into the County Attorney's office. Who was there?

The Applicant: The two lieutenants and the County Attorney.

Mr. Whalan: That is the Air Force attorneys again?

97 The Applicant: Yes, sir.

Mr. Pruitt: Let me get clear as to the timing on that portion of this case we are talking about right now. This was your initial arrest and the first hearing you had before any type of judge.

The Applicant: Yes, sir, it was on the 16th of November, the first time I went to town.

Mr. Pruitt: This was a justice of the peace?

The Applicant: Yes, I think so. I don't know exactly what it was.

Mr. Pruitt: Was it held in a courthouse?

The Applicant: Yes, sir, it was in a courthouse.

Mr. Pruitt: Were you represented by counsel at that time?

The Applicant: I think this lawyer I had on the base, he was there with me.

Mr. Pruitt: Well, now, that is where I am not clear. I understood that we were talking about when the police first brought you down to the courthouse.

The Counsel: There are two different dates involved there.

The Applicant: You see, about two days—I think it was Tuesday they carried me into town and the lawyer that come out on the base and talked to me he was there.

The Counsel: When was that?

98 The Applicant: That was on a Tuesday, I believe it was. I don't know the exact date. But that is when they set a $10,000 bond on me.

Mr. Pruitt: My question was, was the incident that you were just talking about the first time that you had been brought before a judge of any sort?

The Applicant: Yes, sir, that was the first time.

Mr. Pruitt: I am still not clear. Let's see if we can back up a little bit. You were arrested where?

The Applicant: In Altus, Oklahoma, at the barber shop.

Mr. Pruitt: At the barber shop. Who identified you, do you know?

The Applicant: This colored policeman.

Mr. Pruitt: Colored policeman. Do you happen to know how he could have identified you?

The Applicant: Well, he knows all the colored boys around there. I was one of the first colored boys to be there. There's just two joints, and he knows all the colored boys around there. He said he saw me put the girl out of the car that morning. He wanted to take me down to City Hall and question me about the girl we brought into town that morning.

Mr. Pruitt: You went along along peaceably?

The Applicant: Yes, sir. I went right along with him.

Mr. Pruitt: And then what happened?

The Applicant: They carried me in this little room.
99 Then, I'd say in about ten minutes the County Attorney come in and set down and started asking me questions. He said, "Were you the driver of the car?" and I said, "Yes, sir." He said, "Was anybody else with you?" I said, "Yes, two other boys were with me." He said, "Did you have sexual intercourse with the girl?" and I said, "No." He said, "Well, tell me just what happened." I told him, I said, "I picked the girl up about seven miles out of town, brought her into town. She said she was cold and wanted a ride into Altus. When we got into Altus, we went down about a block—we went right past the police station. She was setting on the outside, and they could have seen her if they were looking. So I said, 'We have to get some gas.' Before she got in the car I told her you have to get out when we get into town. I said we're going to get some gas and you can't go to the gas station with us. So, she got out of the car. There was a little tree, like a rose bush, or something, and she hid behind that tree, that rose bush. Before she got out, she said, 'Are you all going out of town? How far are you going out of town?' This boy in the back seat that owned the car, he woke up. I said, 'Well, you ask him if you can ride. It's his car.' He said, 'Yes, she can ride on out of town.' I said, 'Well, I'm going to get some gas.' I went over to the gas station—this is right across the street from where she got out—got some gas and come back and stopped and she gets back in the car. Then we drove on out to Mr. Riley's house. And then when I pulled up in the
100 front, the boy and the girl and the other fellow in the back seat gets out and go in the front door. I drive the car on around the side of the house into the back. By the time I get the car parked, Reese is coming out the back door, and that's when he told me, he said, he could stay there at this house for $2.00 all night with the girl. I said, 'No. If you stay with her, you'll get us all in trouble, if you stay with this girl.' "

Mr. Pruitt: Now, this is the story that you related to the County Attorney?

The Applicant: Yes, sir, I told him the same thing.

Mr. Pruitt: Relate to us again what happened there.

The Applicant: He said, "Did you have sexual relationship with her?" and I said no. Then he told the colored police to leave the room for a minute. Then they shut the door. They all started crowding around. I told them, in my statement I said I grabbed one of the people to protect myself to keep them from beating me up. About that time the OSI in plain clothes come in the doorway and they stopped. Then he took over from there and started asking me the same questions, and I told him. But they had told him that I was helping this girl to escape from a girls' home. I was bringing her back to Altus, Oklahoma, where she run off about 30 miles from there. Then, in some kind of way, he heard that I was supposed to come back and pick her up and take her to Mississippi or Tennessee somewhere.

Mr. Pruit: Who had heard?

101 The Applicant: The County Attorney; they put that in the record, that I was supposed to come back and pick her up.

Mr. Whalan: In what record, now?

The Applicant: In the record there, whatever record it was in Altus, Oklahoma.

Mr. Whalan: The local police records?

The Applicant: Yes, sir.

Mr. Pruitt: I would like to follow along with a chronology of this, what happened step by step. What transpired after the OSI people and the plain-clothesmen came in?

The Applicant: He asked me did I want to take a test and I said, "Yes, I'm ready to take any kind of a lie-detector test." I said, "Yes, sir, I'm ready to go now." Well, they didn't get around to that. Then, he left and went out and started talking to the County Attorney; they went into another room. I stayed over there by myself until about 12:00 o'clock, and then they come and got me and carried me to the county jail. I stayed there until 8:00 o'clock the next morning.

Mr. Pruitt: When did you appear before a judge of some sort?

The Applicant: That was about a week before I was going on trial. They set my trial to be the 19th of October. They come and got me that Tuesday. Mr. Carr, I believe, was there and they set my bond for $10,000.

Mr. Pruitt: Let's get the time straight on this
102 again. You were arrested on what date?

The Applicant: The 29th of October.

Mr. Pruitt: Twenty-ninth. You talked to the County Attorney that night and then they put you in jail in Altus, Oklahoma.

The Applicant: Yes, sir, and then they carried me to the stockade the next morning.

Mr. Pruitt: Then they released you to the military, carried you to the stockade.

The Applicant: Yes, sir.

Mr. Pruitt: You had not appeared before any justice of the peace or any judge of any sort, to your knowledge?

The Applicant: No, sir, until about a week before they set me down for trial, I think it was.

Mr. Pruitt: Now, tell us about your first appearance before a judge.

The Applicant: My first appearance was—they carried me to town. They was going to set my bond at $10,000. Mr. Carr, he talked to them. I never did go before the judge; he talked to him. He come out and he said, "Have you got $10,000? The bond is $10,000.' I said, "No, I don't have the money right now." They carried me on back to the base. That Friday, they come and got me again and give me five years, on the 16th.

Mr. Pruitt: At the time Mr. Carr was representing you there, to your knowledge, were there any witnesses
103 heard by the justice of the peace? Were accusations made against you, charges made against you?

The Applicant: Well, sir, I don't know. There was a lot of people around there. Mr. Carr and another man was in civilian clothes; I don't know what he was. I never did go in the justice of the peace s room. I stood outside on the steps.

Mr. Pruitt: Personally, did you not have any hearing before any justice of the peace or any judge at that time?

The Applicant: No, sir, I don't think so. I think a captain carried me down town that morning; I am not sure. It

was a captain, I believe it was, that come and got me and carrried me down town that morning.

Mr. Pruitt: Did you make any additional statements that morning, either in writing or orally, over and beyond what you have told us that had transpired?

The Applicant: No, sir.

Mr. Pruitt: You categorically deny that you lay on the bed with Miss Herron?

The Applicant: I didn't say I laid on the bed with nobody.

Mr. Pruitt: Then, what happened after this advice that Mr. Carr gave to you about the $10,000 bond?

The Applicant: He said, "You've got to get someone to go your bond. It's $500.00." I said, "I don't have $500.00 now. I'll just have to stay in jail."

Mr. Whalan: Did he offer to represent you at that point?

104 The Applicant: No, he didn't.

Mr. Whalan: Did he discuss the case with you any further?

The Applicant: No, sir, he didn't.

Mr. Pruitt: When did you first see a Judge?

The Applicant: It was on Friday, the 16th, when they give me five years.

Mr. Pruitt: I don't believe I have any further questions.

Mr. Whalan: Mr. Jackson, starting at the point now where you were in the courtroom, and the judge, after a few preliminary comments, said something to you about having an attorney represent you, after which you were taken into the County Attorney's office. Who went into the County Attorney's office with you.

The Applicants: The two lieutenants.

Mr. Whalan: That is the two Air Force lieutenants?

The Applicant: Yes, sir, and Mr. Rutherford, the County Attorney.

Mr. Whalan: The County Attorney.

The Applicant: And that was all—and myself.

Mr. Whalan: That was all. Did the judge go into that room?

The Applicant: No, sir, he did not.

Mr. Whalan: He did not. Now, what took place in that room?

The Applicant: That is when he said if I don't take the five years, he would give me the electric chair or life imprisonment.

105 Mr. Whalan: Who said this now?

The Applicant: The County Attorney said that.

Mr. Whalan: The County Attorney. And the two Air Force officers were there?

The Applicant: Sitting there.

Mr. Whalan: Now, I want to caution you to be careful and speak only the truth here because we could follow up and verify some of these statements that came about while the officers were there.

The Applicant: Yes, sir, they were present.

Mr. Whalan: They were there present.

The Applicant: Yes, sir.

Mr. Whalan: There is no question about that in your mind?

The Applicant: No, sir, they were there.

Mr. Whalan: And they heard this County Attorney tell you that you had better go ahead and plead guilty or you could get the electric chair.

The Applicant: Yes, sir.

Mr. Whalan: You are firm in your memory of that now?

The Applicant: Yes, sir, he said that.

Mr. Whalan: And the two Air Force officers were there?

The Applicant: Yes, sir, they were present. He said, "If you go before the judge—and I'm going to help pick the jury and they're going to give you what I want you to have anyway, so it's best to take the five years. On

106 account of you're colored and her being white, they're going to give it to you anyway; they're going to throw the book at you."

Mr. Whalan: Now, Mr. Jackson, you are not using some imagination here, are you?

The Applicant: No, sir, that's what he said.

Mr. Whalan: Are you positive of this? (No response heard.)

Mr. Pruitt: What was the reaction of the two attorneys, two Army officers who were there, supposedly to see that your rights were protected? Did they make any comment?

The Applicant: No, sir. When he got through saying that, he left the room, the County Attorney did. He said,

"Well, you talk to the man." So, Lieutenant Eckert, I believe——

Mr. Whalan (interposing): That is the Air Force officer?

The Applicant: Yes, sir. Lieutenant Eckert said, "Jackson, I think your best bet is to go and take the five years. If he writes up clemency in two years, you'll be out, in two and a half years, and it will all be over." He said, "But if you was up in Ohio, they never would have thought nothing about that."

Mr. Pruitt: May I ask this question and then I will be quiet for a little while. Did they express any belief one way or the other about your guilt in this situation?

The Applicant: No, sir, they just went along with the County Attorney all the way; whatever he said goes, they went along with him. They were calling me up from
107 the stockade about every other day trying to get me to take the five years. I never did do it.

Mr. Pruitt: They did not suggest that you get a civilian attorney to fight the case?

The Applicant: No, sir, they never did.

Mr. Pruitt: That is all I have.

Mr. Whalan: The two Air Force officers, if I understood you correctly earlier, had been told by you that you were not guilty of the charge that had been placed against you, is that right?

The Applicant: Yes, sir.

Mr. Whalan: Did they, in the County Attorney's room, after the County Attorney had left the room, say anything to you to the effect that they knew differently? Did they tell you that the—I don't know this to be a fact; I am merely supposing this to try to get all the facts we possibly can—did they tell you that the County Attorney or the police had told them that they did have evidence that you had raped this girl?

The Applicant: No, sir, they never did say that.

Mr. Whalan: What reason, then, did they give for suggesting that go ahead and take your punishment, so to speak?

The Applicant: I don't know, sir. They just kept telling me to take the five years; that's the best way out.

Mr. Whalan: They did not give you any reason?

The Applicant: No, sir, they didn't.

108 Mr. Whalan: Did they make any comment about it at all?

The Applicant: No, sir.

Mr. Whalan: Didn't you ask them why they suggested you do that?

The Applicant: No, I didn't ask them anything. I just said, "Why do you all want me to take the five years when I haven't did anything?"

Mr. Whalan: And what did they say?

The Applicant: They said, "Well, all the evidence points to you" or something like that.

Mr. Whalan: Did they say what the evidence was?

The Applicant: No, sir, they never did.

Mr. Whalan: Do you know whether or not statements had been taken by OSI or the police officers from the two other boys that were in the automobile with you while the girl was riding in the car?

The Applicant: The one statement that he said where he asked the man for the room. They took that one, but the other one, they didn t.

Mr. Whalan: Did that boy accuse you of having had a relationship with this girl?

The Applicant: No, sir. You see, the man who owned the house said I was the man that come inside asking for the room. He had me falsely accused. Reese was

109 the one that asked him for it. The OSI took that statement from him.

Mr. Whalan: Did you tell the police or the OSI that this other fellow had made arrangements to stay at the Riley house for $2.00 with the girl?

The Applicant: Yes, sir, I told them.

Mr. Whalan: And did they ever do anything about it?

The Applicant: They never did call the other two boys in; they never did.

Mr. Whalan: All right. Now, what happened after you and the two officers had your conversation in the County Attorney's office?

The Applicant: Then they carried me back before the judge and give me five years.

Mr. Whalan: What happened after you got back into the courtroom before the judge?

The Applicant: The judge said, "County Attorney, what do you recommend?" and he said, "Five years in the State Penitentiary."

Mr. Whalan: The County Attorney recommended that. Did the judge talk at all during the time with the two Air Force officers?

The Applicant: Not as I know of.

Mr. Whalan: Were they present?

The Applicant: Yes, sir, they were present.

Mr. Whalan: Was anything further said about your being represented by an attorney?

110 The Applicant: No, sir.

Mr. Whalan: Then what happened?

The Applicant: Well, when they give me the five years they carried me on back to the base and put me back in the stockade and they had me discharged in little or no time.

Mr. Whalan: How long now did you serve in confinement outside of the stockade?

The Applicant: Oh, about three weeks; maybe more.

Mr. Whalan: Three weeks?

The Applicant: Yes, sir.

Mr. Whalan: Weren't you in confinement longer than that until your appeal?

The Applicant: From October 29th up until that time I was out on bond.

Mr. Whalan: Where did you get the money to buy bond?

The Applicant: My sister.

Mr. Whalan: Your sister.

Mr. Pruitt: Was there a jury? Were there 12 men?

The Applicant: I never did go to trial.

Mr. Pruitt: You did not appear before any jury?

The Applicant: No, sir, I never did.

Mr. Whalan: Why didn't you insist on having an attorney before you were sentenced?

The Applicant: Well, there wasn't nothing to it. I didn't do anything. I just figured they were trying

111 to put something over on me. I said, well, there's nothing to it.

Mr. Whalan: Wait a minute now. You knew that you might have a serious problem because you had earlier, according to what you said earlier here, you had the girl get out of the car before you went to the service station because of the feeling that might exist down there. Now,

didn't you anticipate that in order to have your rights protected you would have to have counsel to assist you?

The Applicant: Yes, sir, I knew that.

Mr. Whalan: Well, why didn't you insist upon it or ask for it?

The Applicant: Well, they didn't have no evidence on me. I hadn't did anything. I don't see why I should put out the money to get a lawyer.

Mr. Whalan: All right. Now, how about Attorney Carr? I am curious to know why you did not ask him to represent you.

The Applicant: The first day I talked to him, he said the people in Altus didn't think nothing about it. They had a big writeup in the paper the next day.

Mr. Whalan: You say there was a big writeup?

The Applicant: Yes, sir.

Mr. Whalan: That is why I am asking this now because when he came down with you to arrange for bond, attempt to arrange for bond, he knew then that the Court had set the bond at $10,000, which is a pretty high bond.

112 The Applicant: Yes, sir.

Mr. Whalan: He must have realized at that point, then, that this was not going to be an easy case; that it was being taken seriously. Do you know why he did not follow through?

The Applicant: No, sir. He never did come back on base to talk to me.

Mr. Whalan: Let us jump quite a space now to the point where you decide to bring action to appeal the conviction. How did you come to do that?

The Applicant: I called my sister and told—well, my lawyer had supposed to have been there. Well, they give me five years on Friday, and my trial was supposed to come that Monday, on the 19th.

Mr. Pruitt: What lawyer?

The Applicant: Amos T. Hall, Tulsa, Oklahoma.

Mr. Whalan: You got in touch with him through your sister?

The Applicant: Yes, sir.

Mr. Whalan: I see. Has your sister financed your expenses.

The Applicant: All the way.

Mr. Whalan: What does your sister do?

The Applicant: My sister, she works at a dress factory.

Mr. Whalan: Is she married?

The Applicant: Yes, sir. I have two or three and all of them help me, my sisters.

113 Mr. Pruitt: I don't know whether this is appropriate or not, but it is an effort to get at the facts. Mr. Craig, did you contact Attorney Carr?

The Counsel: No, sir.

Mr. Whalan: I would like to go back, Mr. Jackson, to the statement that you have made and in writing to the effect that you were coerced and threatened. Will you explain in detail just exactly what you meant by that.

The Applicant: Well, they made this colored officer leave the building, leave the room——

Mr. Whalan (interposing): This is in the police station?

The Applicant: Yes, sir, the night they picked me up. They was all going to crowd around me, they were going to jump on me and make me say I had something to do with the young lady.

Mr. Whalan: Did they jump on you?

The Applicant: No, sir, but they was until I grabbed this policeman in front of me. I grabbed him to protect myself.

Mr. Whalan: What do you mean "you grabbed him?" Grabbed him and pulled him in front of you?

The Applicant: Yes, sir. He was, just like Mr. Craig setting there, well, my chair was facing him. When they opened the door, just like the door there (indicating), they all come forward and I jumped and grabbed him. I stopped him. About the time the OSI man come in.

Mr. Whalan: How were you treated by the OSI people?

114 The Applicant: They were nice.

Mr. Whalan: They were nice.

The Applicant: They come in and sat down and started talking to me and asked me would I want to take a lie-detector test and I told them yes.

Mr. Whalan: Did you ever take a lie-detector test?

The Applicant: No, sir.

Mr. Whalan: Would you still be willing to take a lie-detector test?

The Applicant: Yes, sir, I would be willing to take one any time.

Mr. Whalan: You would?

The Applicant: Yes, sir.

Mr. Whalan: One more question, please. I don't want to know what denomination, but do you have a religion?

The Applicant: Yes, sir.

Mr. Whalan: Do you go to church?

The Applicant: Yes, sir, I go to church.

Mr. Whalan: About how often?

The Applicant: I go every Sunday.

Mr. Whalan: Measure your words now.

The Applicant: I go every Sunday.

Mr. Whalan: You go every Sunday. How long have you been going to church every Sunday?

The Applicant: I've been going to church ever since I know of. I didn't go too regular when I was in the service. Since I've been out, I've been going every Sunday.

115

Mr. Whalan: Did you go to church very often in the service?

The Applicant: Yes, sir, when I went TDY.

Mr. Pruitt: Did you ever discuss your difficulty with the chaplain?

The Applicant: Yes, sir, he come in and said, "Why did you plead guilty?" I said, "I never did plead guilty." All of them want to know how come I pleaded guilty. I told them I never did because no one around there believed I did anything like that.

Mr. Pruitt: Do you have any knowledge as to whether or not the chaplain talked with the Air Force officers who were from the legal staff?

The Applicant: He said he talked to all of them because he wanted to know why they took me down and made me plead guilty. They never did let my CO know what was going on. He didn't know it either. He didn't know they had come and got me and carried me into town.

Mr. Pruitt: What did the chaplain tell you after he had talked with the legal officers?

The Applicant: He talked to me first before he talked to them. I told him they carried me down town and they pleaded guilty for me.

116

Mr. Pruitt: After his discussion with you, and after you had told him what had transpired, I gather he indicated he would talk to the legal officers.

The Applicant: Yes, sir. He didn't like what they had did to me.

Mr. Pruitt: Did he come back and tell you about his discussion with them?

The Applicant: No. He come back to see some other people and I was just there. He come to see somebody else, and while he saw me he talked to me and said he didn't know what happned. He didn't actually come out and tell me what the discussion was about; but he said he was sorry I pleaded guilty. I told him I never did plead guilty. They all thought on the base it was the same problem; they said there was no case at all. My CO was surprised, and everybody else on the base was surprised they give me five years in the penitentiary.

Mr. Pruitt: I don't know whether we can get at these facts any further or not, but the one thing that puzzles me somewhat is that in reading from this record of the trial, and so forth, it speaks of a preliminary hearing and then a later hearing. If I understand Mr. Jackson correctly, he alleges that insofar as his personal participation, he did not appear before any judge up until the time he was actually sentenced.

The Applicant: Unless Mr. Carr saw the judge when he took me down there. I don't know. I wouldn't say
117 he did. But I never did see him.

Mr. Whalan: Well, I think it is a matter of time.

The Applicant: Mr. Carr might have saw him when he first went down there.

Mr. Pruitt: To the best of your knowledge, you did not see a judge until the day that you were actually sentenced.

The Applicant: Yes, sir.

Mr. Whalan: But he was called up for arraignment and bond was set earlier than the day he actually appeared in court.

Mr. Pruitt: That is what is a little bit difficult for me to grasp. It is possible Mr. Jackson did not realize he was before a justice of the peace at the time bond was fixed, and so forth.

The Counsel: That can be a pretty informal matter.

Mr. Whalan: Apparently, this whole proceeding was informal.

The Counsel: Of course, I wasn't there.

Mr. Whalan: Including the District Court hearing.

The Counsel: It is difficult for me to understand how it all took place and how it all happened, just listening to the facts as I have heard them here and as I have heard them before. But the matter of the preliminary hearing can be a very informal matter—making the charge and fixing the bond.

Mr. Whalan: That's right.

Mr. Pruitt: I have nothing further. We have been
118 at this pretty steadily now for more than an hour and a half, and I think we should try to close as quickly as we can. I certainly do not want to cut anyone off short.

Mr. Whalan: No. These gentlemen have come a long way to have their hearing, and we certainly do not want to cut their time short.

Now, Mr. Jackson, do you feel that you have by any chance anything in a normal sexual desire? Do you know what I mean?

The Applicant: I know what you mean.

Mr. Whalan: Are you of such a nature that you might feel disposed towards raping a girl?

The Applicant: No, sir, I never raped no kind of woman.

Mr. Whalan: I can't hear you.

The Applicant: I haven't raped any kind of woman. I haven't even said two words to her.

Mr. Whalan: I do not mean that particular girl, but any girl.

The Applicant: Any girl.

Mr. Whalan: Do you feel disposed to have sexual gratification quite often?

The Applicant: No, sir, I haven't had girls fighting over me. They have a court order down there for a girl fighting over me.

Mr. Whalan: Court order where?

The Applicant: In Guthrie, Oklahoma—girls fight-
119 ing and threatening to kill one another about me.

Mr. Whalan: Maybe you ought to tell us something about that.

The Applicant: I don't know too much about it.

Mr. Whalan: Where did this occur?

The Applicant: Guthrie, Oklahoma. They have records up there of girls fighting over me.

Mr. Whalan: Was that before the incident we are speaking of now or afterwards?

The Applicant: Before this.

Mr. Whalan: Before this. Were they colored girls?

The Applicant: Yes, sir, they were colored girls.

Mr. Whalan: Was that out at Riley's home?

The Applicant: No, this is in Guthrie, Oklahoma.

Mr. Whalan: Oh, Guthrie, Oklahoma. I see. You were not arrested as a result of that?

The Applicant: No, sir, I wasn't arrested.

Mr. Whalan: I think that takes care of all the questions I had in mind, unless you have something now, Mr. Craig.

The Counsel: No other questions, Mr. Chairman.

Mr. Whalan: Did you wish to make any statements?

The Counsel: No, sir. I believe the matter has been covered very fully.

Mr. Whalan: All right, sir. Do you have anything you want to say, Mr. Jackson?

120 The Applicant: No, sir, just that I would like to get back in the Air Force and make a career of it. That's about it.

Mr. Whalan (turning to Mr. Pruitt): Do you have anything else?

Mr. Pruitt: Nothing further.

Mr. Whalan: If there is nothing further, the hearing will be closed.

Thank you for coming in.

(Whereupon, at 1:20 o'clock p.m., the hearing was closed.)

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121 **Exhibit N. 2**

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON 25, D. C.

4 January 1961

STATEMENT OF THE MILITARY SERVICE

of

William Jackson, Jr., AF 18 384 622

The Records show William Jackson, Jr., AF 18 384 622, enlisted in the Regular Army 16 January 1951, in the grade of Recruit for a period of three (3) years, was honorably discharged 11 October 1951, by reason of Army Regulation

615-362 (Minority). No time lost. Enlisted in the United States Air Force 26 January 1952 in the grade of Private First Class for a period of four (4) years, was honorably discharged 6 December 1955, by reason of Convenience of Government. 192 days lost Under Section 6(a) Appendix 2b MCM 1951. Reenlisted in the United States Air Force 7 December 1955 in the grade of Airman First Class for a period of six (6) years, was discharged under Other Than Honorable Conditions, 24 November 1956, by reason of Conviction of Civil Court, Air Force Regulation 39-22. 26 days lost under Section 6(a) Appendix 2b MCM 1951.

FOR THE CHIEF OF STAFF:

T. S. FONG
T. S. Fong
2nd Lt., USAF
Directorate of Administrative Services

Filed Nov. 2, 1956

122 IN THE DISTRICT COURT, JACKSON COUNTY, OKLAHOMA

No. 1943

Information

STATE OF OKLAHOMA, *Plaintiff*

v.

WILLIAM JACKSON, *Defendant*

In the Name and by the Authority of the State of Oklahoma:

I, Ross Rutherford, County Attorney of the County of Jackson and State of Oklahoma, duly authorized and empowered by law to inform offenses committed and triable within said County and State, come now here and give the Court to understand and be informed, that at and within said County and State, on or about the 29th day of October, 1956, and anterior to the filing of this information, William Jackson then and there being, did then and there, wilfully, unlawfully, wrongfully and feloniously accomplish the act of sexual intercourse with, carnally know and rape one Joy Herron a female person under the age of sixteen years, to-wit: of the age of fifteen years, and not the wife of him, the said William Jackson contrary to the form of the

statute in such cases made and provided against the peace and dignity of the State of Oklahoma.

Ross Rutherford, County Attorney

I do hereby certify that the above and foregoing is a true copy of the original document now on file in my office. Witness my hand and official seal of the County Clerk, Jackson County, Oklahoma, this 16 day of Nov., 1956.

Cletis Porter, Court Clerk
Connie Hagan, Deputy

123 No. ——

STATE OF OKLAHOMA
Plaintiff

vs.

_____
_____
_____

Defendant

INFORMATION

Filed this ——— day of ———, 19——

_____
_____
_____

WITNESSES:

_____
_____
_____
_____
_____

STATE OF OKLAHOMA } IN DISTRICT COURT
JACKSON COUNTY, }

BE IT REMEMBERED, That on the 16th day of November, 1956, the same being one of the days of the July 1956 term of the District Court of Jackson County, State of Oklahoma, there being present

Honorable Weldon Farris, Judge. Jim Pryor, Sheriff. and Cletis Porter, Clerk.

And Public Proclamation of opening of said Court having been made, the following among other proceedings were had.

No. 1943

THE STATE OF OKLAHOMA

v.

WILLIAM JACKSON, *Defendant*

The prisoner, the above named William Jackson defendant, being personally present in open Court and having been legally (a) presented by information for the crime of Rape in the Second Degree and arraigned, and said defendant having entered herein his plea of guilty, as charged in said information and being asked by the Court if he had any legal cause to show why judgment and sentence should not be pronounced against him, and he giving no good reason in bar thereof;

IT IS THEREFORE CONSIDERED, ORDERED, ADJUDGED AND DECREED by the Court that the said William Jackson be confined in the State Penitentiary at McAlester in the State of Oklahoma for the term of Five years for said crime by him committed. Said term of sentence to begin at and from the date of delivery to the warden of said Penitentiary, and that said defendant pay the costs of this prosecution, taxed at ——, for which execution is awarded.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Sheriff of Jackson County, State of Oklahoma transport said William Jackson to the said peniten-

tiary at McAlester in the State of Oklahoma and that the warden of said penitentiary do confine and imprison the said William Jackson in accordance with this judgment, and that the Clerk of this Court do immediately certify under the seal of the Court and deliver to the Sheriff aforesaid, two copies of this judgment, one of said copies to accompany the body of said defendant to the said penitentiary and to be left therewith, at said penitentiary, said copy to be warrant and authority for the imprisonment of said defendant in said penitentiary, and the other copy to be warrant and authority of said Sheriff, for the transportation and imprisonment of the said defendant, as hereinbefore provided. Said last named copy to be returned to the Clerk of said Court with the proceedings of said Sheriff thereunder endorsed thereon. And thereupon the Court notified the defendant of his right of appeal.

Done in open Court on this 16th day of November, 1956.

WELDON FERRIS
Judge

(SEAL)

CLETIS PORTER
Court Clerk
By CONNIE HAGAIN
Deputy

I do hereby certify that the above and foregoing is a true copy of the original document now on file in my office. Witness my hand and official seal of the Court Clerk, Jackson County, Oklahoma, this 16th day of November 1956.

CLETIS PORTER, Court Clerk
CONNIE HAGAIN, Deputy

125 I, ... Clerk of the District Court of ..... County, State of Oklahoma, do hereby certify the above and foregoing to be a full, true, correct and complete copy of the judgment and sentence in the case of the State of Oklahoma vs. ..... as the same appears in record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this ..... day of ....., 19.....

.....District Clerk
By .....Deputy

NOTE—(a) Presented by information by the County Attorney of said County or Indicted by a Grand Jury of said County.

SHERIFF'S RETURN

Received the within Writ on the ..... day of ..... 19....., at ..... o'clock ..M., and executed on the ..... day of ..... 19....., at ..... o'clock .....*M.*, by

.....
.....
.....

Dated this ..... day of ....., 19.....

.....
Sheriff of.....County
By.....Under Sheriff,
Deputy

No. .....

IN DISTRICT COURT

JUDGMENT AND SENTENCE ON PLEA OF GUILTY

THE STATE OF OKLAHOMA

VS.

.....
.....
Defendant....

Filed ..... 19.....

.....
District Clerk.
By .....Deputy
Recorded in Journal No. .....page .....

96th AAF Sq
Altus AFB, Okla

DEPARTMENT OF DEFENSE
WASHINGTON 25, D. C.

ENLISTMENT RECORD - UNITED STATES AIR FORCE

Form Approved
Budget Bureau No. 33 R014.3

1. LAST NAME-FIRST NAME-MIDDLE NAME (To be initiated by enlistee)	2. SERIAL NUMBER	3. SEX	4. RACE
Jackson, William Jr., WJJ	AF 18 384 622	Male	Negroid

5. PHYSICAL AND MENTAL DATA		6. HOME ADDRESS (Number & street or rural route (if none, so state), city, town or P.O., county and state)
8. PHYSICAL CATEGORY	9. MENTAL DATA	
"A"	TS-5, C-6, M-4	[illegible]

7. PLACE OF ENLISTMENT	8. ENLISTED IN THE GRADE OF (To be initiated by enlistee)	AUTHORITY
Altus AFB, Oklahoma	A/1C (P) WJJ	AFM 39-9
9. ENLISTED UNDER AUTHORITY OF	10. BRANCH OF SERVICE	
AFM 39-9	Air Force	
11. FOR ASSIGNMENT TO	TOTAL ACTIVE FEDERAL MILITARY SERVICE	
None	YEARS: 4 MONTHS: 0 DAYS: 25	

DECLARATION OF APPLICANT

13. DATE OF BIRTH			14. PLACE OF BIRTH (City and state)	15. COLOR EYES	16. COLOR HAIR
DAY	MONTH	YEAR			
16	Jun	34	Langston, Oklahoma	Brown	Black

17. CITIZEN [X] YES [ ] NO IF NO, FILED DECLARATION? [ ] YES [ ] NO	18. IF NATURALIZED OR DECLARANT, COURT OF JURISDICTION	19. NATURALIZATION OR DECLARANT NUMBER
	Not Applicable	Not Applicable

20. MARITAL STATUS	21. NUMBER, AGE, & RELATIONSHIP OF PERSONS DEPENDENT ON YOU FOR SUPPORT (To be initiated by enlistee)
Married	Dependents: Wife-[illegible] Yrs; [illegible] WJJ

22. EDUCATION (Years)			23. OTHER CIVILIAN SCHOOLS ATTENDED (If degree, state kind)
GRAMMAR	HIGH SCH	COLLEGE	
8	4	0	None

24. CIVILIAN TRADE OR OCCUPATION (Most qualified)	25. HOW LONG EMPLOYED (Yrs & mos) (Most qualified trade or occupation)	26. WAGE OR SALARY (Average)
None	Not Applicable	N/A

27. REGISTERED FOR SELECTIVE SERVICE [ ] YES [X] NO IF YES, GIVE NUMBER	28. SELECTIVE SERVICE BOARD NUMBER AND ADDRESS (City, county, state)
Not Applicable	Not Applicable

29. PRIOR ROTC OR CADET TRAINING (Years-Type units)	30. PRIOR SERVICE (State component & grade now held if any)
None	None

31. LAST SERVICE (USA, USAF, USN, USMC, USCG)	32. COMPONENT (Reg, Res, ANG, AMUS, Ret Navy or USCG)	33. SERIAL NUMBER
USAF, 26 Jan 52, ENL FE	Regular Air Force	AF 18 384 622

34. ORGANIZATION	35. DATE ASSIGNED OR ATTACHED AT DISCHARGE	36. GRADE	37. PAY GRADE
96th A & E Sq., (SAC)	Hon, AFR 39-14, 5 December 1955	A/1C	64151

PAR 3b (2)

(126)

DECLARATION OF APPLICANT

23. DATE OF BIRTH (Day / Month / Year)	24. PLACE OF BIRTH (City and state)	25. COLOR EYES	26. COLOR HAIR
16 Jun 34	Langston, Oklahoma	Brown	Black

27. CITIZEN (X YES / NO)	28. IF NATURALIZED OR DECLARANT, GIVE DATE, PLACE, AND COURT OF JURISDICTION	29. NATURALIZATION OR ALIEN NUMBER
IF NO, FILED DECLARATION? (X YES / NO)	Not Applicable	Not Applicable

30. MARITAL STATUS	31. NUMBER, AGE, & RELATIONSHIP OF PEOPLE DEPENDENT ON YOU FOR SUPPORT (To be initialed by enlistee)
Married	Dependents: Wife-1 Yrs, [illegible] WBB

32. EDUCATION (Years)			33. OTHER CIVILIAN SCHOOLS ATTENDED (If degree state kind)
GRAMMAR	HIGH SCH	COLLEGE	
8	4	0	None

34. CIVILIAN TRADE OR OCCUPATION (Most qualified)	35. HOW LONG EMPLOYED (Yrs & mos) Most qualified trade or occupation?	36. WEEKLY WAGE (Average)
None	Not Applicable	N/A

37. REGISTERED FOR SELECTIVE SERVICE (YES / X NO)	38. SELECTIVE SERVICE BOARD NUMBER AND ADDRESS (City, county, state)
IF YES, GIVE NUMBER: Not Applicable	Not Applicable

39. PRIOR ROTC OR CADET TRAINING (Years-Type units)	40. PRIOR ENLISTED OR COMMISSIONED SERVICE (No. of years & grade one half of any)
None	None

41. LAST SERVICE (ESA, USAF, USN, USMC, USCG) & COMPONENT (Reg, Res, ANG, ARMS, FecNG, or St G)	42. SERIAL NUMBER
USAF, 26 Jan 52, ENL FE — Regular Air Force	AF 18 384 622

43. ORGANIZATION	44. GRADE, RATING OR RANK AT TIME OF DISCHARGE	45. IN GRADE SINCE	46.
96th A & E Sq., (SAC) Hon, AFR 39-14	P&E 3b (2), 5 December 1955	A/1C	64151

47. HAVE YOU EVER BEEN CONVICTED BY CIVIL AUTHORITIES OR BY COURT-MARTIAL OF ANY OFFENSE (excluding minor traffic violations)? (X NO)

48. HAVE YOU EVER BEEN CONFINED IN CIVIL JAIL, PRISON, OR PENITENTIARY? (X NO) If answer to 47 or 48 is yes give details. (Prior service personnel consider only convictions and confinements since last active service.) (To be initialed by enlistee) WBB

49. HAVE YOU EVER BEEN INDICTED, HAVE CHARGES PENDING AGAINST YOU, OR BEEN CONVICTED BY A CIVIL COURT OF ANY FELONY? (Prior service personnel answer No unless imprisoned subsequent to date of last discharge.) (To be initialed by enlistee)

No WBB

50. ARE YOU NOW A PAROLEE OR PROBATIONER UNDER ANY LAW, OR HAVE CHARGES BEEN PREFERRED AGAINST YOU AWAITING FINAL ACTION BY ANY CIVIL AUTHORITY? (Prior service personnel consider only period since date of last discharge.) (To be initialed by enlistee)

(X NO) WBB

51. HAVE YOU EVER BEEN DISCHARGED FROM ANY BRANCH OF THE ARMED FORCES OF THE UNITED STATES OR ANY OF ITS COMPONENTS UNDER OTHER THAN HONORABLE CONDITIONS, OR BY REASON OF A SENTENCE OF A COURT-MARTIAL? (X NO) WBB

I CERTIFY THAT I HAVE READ AND FULLY UNDERSTAND THE ENTRIES RECORDED BY ME ON STANDARD FORM NO. 88, REPORT OF MEDICAL HISTORY, AND THAT THEY ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. (To be initialed by enlistee) WBB

I HEREBY CERTIFY THAT I AM PHYSICALLY QUALIFIED FOR ENLISTMENT AND THAT THE ANSWERS RECORDED ABOVE ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. (X YES) (To be initialed by enlistee) WBB

(1961)

DD FORM 4

ORIGINAL-MORNING REPORT COPY
DUPLICATE-SERVICE RECORD COPY

126

68

41. REMARKS (To be initialed by enlistee)

I have read so much of AFR 35-62 as sets forth the criteria (reasons) for discharge and types of discharge W.J.J.

42. I UNDERSTAND THAT I AM LIABLE TO TRIAL BY COURT MARTIAL FOR FRAUDULENT ENLISTMENT IF I GAIN ENLISTMENT BY MEANS OF ANY FALSE STATEMENT, WILLFUL MISREPRESENTATION, OR CONCEALMENT AS TO MY QUALIFICATIONS FOR ENLISTMENT. IN ADDITION, I KNOW IF I AM REJECTED BECAUSE OF ANY DISQUALIFICATION KNOWN TO ME AND CONCEALED FROM THE ACCEPTING OFFICER, THE GOVERNMENT WILL NOT FURNISH ME WITH RETURN TRANSPORTATION TO THE PLACE OF ACCEPTANCE.

I DECLARE THAT I AM NOT NOW A MEMBER OF ANY OF THE ARMED FORCES (Army, Air Force, Navy, Marine Corps, or Coast Guard) OR OF ANY COMPONENT THEREOF (Regular, Reserve, or National Guard) IN ACTIVE, INACTIVE, PRESENT OR RETIRED STATUS UNLESS SO INDICATED AND EXPLAINED BY ME, THAT THE FOREGOING QUESTIONS AND MY ANSWERS THERETO HAVE BEEN READ TO ME, THAT MY ANSWERS HAVE BEEN CORRECTLY RECORDED AND ARE TRUE IN ALL RESPECTS, AND THAT I HAVE NO OTHER ANSWERS OR ADDITIONS WHEN WHICH I AM ENLISTING.

GIVEN AT (Place of acceptance)	DATE OF ACCEPTANCE
Altus Air Force Base, Altus, Oklahoma	7 December 1955

SIGNATURE OF WITNESS (First name, Middle initial, Last name)	SIGNATURE OF APPLICANT (First name, Middle name, Last name)
Ralph A. Nagle	William Jackson Jr

43. REMARKS (For use by the recruiting officer)

AQS: Cler 6, Mech 4, Elect 3, Tech Sp 5.
Waiver of Time lost authorized Ltr 44, AF 3[illegible]

DATE OF DISCHARGE: 7 Dec 55

VERIFIED AT	BY (Signature of recruiting officer)	GRADE AND ORGANIZATION OF RECRUITING OFFICER
Altus AFB, Okla	[signature]	1ST LT., USAF, HQ 96TH ABGRU

44. OATH AND CERTIFICATE OF ENLISTMENT

STATE OF OKLAHOMA

CITY, TOWN, OR MILITARY POST ALTUS AIR FORCE BASE

I, WILLIAM JACKSON JR., (First name-Middle name-Last name) DO SOLEMNLY SWEAR (or affirm) THAT I WILL BEAR TRUE FAITH AND ALLEGIANCE TO THE UNITED STATES OF AMERICA; THAT I WILL SERVE THEM HONESTLY AND FAITHFULLY AGAINST ALL THEIR ENEMIES WHOMSOEVER; AND THAT I WILL OBEY THE ORDERS OF THE PRESIDENT OF THE UNITED STATES AND THE ORDERS OF THE OFFICERS APPOINTED OVER ME, ACCORDING TO REGULATIONS AND THE UNIFORM CODE OF MILITARY JUSTICE. AND DO HEREBY ACKNOWLEDGE TO HAVE VOLUNTARILY ENLISTED THIS 7TH DAY OF DECEMBER 1955, IN THE REGULAR AIR FORCE FOR A PERIOD OF SIX (6) YEARS W.J.J. UNDER THE CONDITIONS PRESCRIBED BY LAW, UNLESS SOONER DISCHARGED BY PROPER AUTHORITY. (Words and figures initialed before enlistee signs)

SIGNATURE: William Jackson Jr (First name-Middle name-Last name)

I CERTIFY THAT THE ABOVE OATH WAS SUBSCRIBED AND DULY SWORN TO BEFORE ME THIS 7TH DAY OF DECEMBER A.D. 19 55. I FURTHER CERTIFY THAT THIS ENLISTEE WAS MINUTELY INTERVIEWED BY ME PREVIOUSLY TO SUBSCRIBING TO THE OATH, THAT I FOUND ENLISTEE ENTIRELY SOBER AND IN FULL POSSESSION OF ALL MENTAL FACULTIES, THAT TO THE BEST OF MY JUDGMENT AND BELIEF ENLISTEE FULFILLS ALL LEGAL REQUIREMENTS, AND THAT HE ENLISTS AND ENTERS INTO THE SERVICE OF THE UNITED STATES I HAVE STRICTLY OBSERVED THE REGULATIONS WHICH GOVERN THE RECRUITING SERVICE. I FURTHER CERTIFY THAT THE ABOVE OATH, AS RECITED IN, WAS READ TO THE APPLICANT BEFORE SUBSCRIBING THERETO.

THOMAS J. RADKE, 1ST LT., USAF, HQ 96TH ABGRU

GIVEN AT (Place of acceptance)

Altus Air Force Base, Altus, Oklahoma

DATE (Day, Mo., Yr.)

7 December 1955

SIGNATURE OF WITNESS (First name, Middle initial, Last name)

Ralph A. Nagle

NAME AND GRADE (First name, Middle name, Last name)

William Jackson Jr

43. REMARKS (For use by the recruiting officer)

AQE: Cler 6, Mech 4, Elect 3, Tech Sp 5.

Waiver of Time lost authorized Dir Per 44, AFR 39-4.

DATE OF BIRTH

7 Dec 55

VERIFIED AT

Altus AFB, Okla

SIGNATURE OF RECRUITING OFFICER

NAME AND GRADE OF RECRUITING OFFICER

1ST LT., USAF, HQ 96TH ABGRU

44.

OATH AND CERTIFICATE OF ENLISTMENT

STATE OF OKLAHOMA

CITY, TOWN, OR MILITARY POST ALTUS AIR FORCE BASE

I, WILLIAM JACKSON JR., DO SOLEMNLY SWEAR (or affirm) THAT I WILL BEAR TRUE FAITH AND
(First name-Middle name-Last name)

ALLEGIANCE TO THE UNITED STATES OF AMERICA; THAT I WILL SERVE THEM HONESTLY AND FAITHFULLY AGAINST ALL THEIR ENEMIES WHOMSOEVER; AND THAT I WILL OBEY THE ORDERS OF THE PRESIDENT OF THE UNITED STATES AND THE ORDERS OF THE OFFICERS APPOINTED OVER ME, ACCORDING TO REGULATIONS AND THE UNIFORM CODE OF MILITARY JUSTICE. AND DO HEREBY ACKNOWLEDGE TO HAVE VOLUNTARILY ENLISTED THIS

7TH DAY OF DECEMBER, 19 55, IN THE REGULAR AIR FORCE OF THE UNITED STATES FOR A PERIOD OF

SIX (6) YEARS unless. UNDER THE CONDITIONS PRESCRIBED BY LAW, UNLESS SOONER DISCHARGED BY OR BY AUTHORITY
(Words and figures initialed before signature)

SIGNATURE William Jackson Jr
(First name-Middle name-Last name)

I CERTIFY THAT THE ABOVE OATH WAS SUBSCRIBED AND SWORN TO BEFORE ME THIS 7TH DAY OF DECEMBER A.D. 19 55. I FURTHER CERTIFY THAT THIS ENLISTEE WAS MINUTELY INSPECTED BY ME PERSONALLY IMMEDIATELY PRIOR TO SIGNING THE OATH; THAT FOUND ENLISTEE ENTIRELY SOBER AND IN FULL POSSESSION OF ALL MENTAL FACULTIES; THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF ENLISTEE POSSESSES ALL LEGAL QUALIFICATIONS AND THAT HE ENLISTED AND WAS SWORN IN BY ME AS AN OFFICER OF THE UNITED STATES IN STRICT OBSERVANCE OF THE REGULATIONS WHICH GOVERN THE RECRUITING SERVICE. I FURTHER CERTIFY THAT THE ABOVE OATH, BEFORE IT WAS READ TO THE APPLICANT PRIOR TO SUBSCRIBING THERETO,

THOMAS L. RADKE, 1ST LT., USAF, HQ 96TH ABGRU

(Type name, grade and organization of officer administering oath) (Signature of officer administering oath)

1Carefully compare with the name at top of page 1

2The dates in the oath and certificate must be the same

3The signature must be identical with that subscribed in the presence of applicant

FINGERPRINTS - RIGHT HAND

(Fingerprint impressions will be made in this space in the case of every person enlisting or reenlisting)

90 (127)

128

Headquarters
96TH BOMBARDMENT WING (MED) (SAC)
United States Air Force
Altus Air Force Base, Oklahoma

21 November 1956

EXTRACT

SPECIAL ORDERS
Number 271

1. SSGT ROBERT C BURRIS, AF16411039, is rel fr asg 96th FldMaintSq, 96th BomWgM, SAC, this sta; asg 96th AREFSq, 96th BomWgM, SAC, this sta with EDCSA 22 Nov 56. Rept NTL 22 Nov 26.

2. Para 2 SO 264 this hq, CS, as amnd by para 2 SO 266 this hq, CS, and para 2 SO 268 this hq, CS, relating to asgmt of A/1C CHARLES H GRIEB JR, AF11278168, 96th SupSq, 96th ABGru, SAC, this sta to 3906th ABGru, APO 349, New York, NY *is revoked*.

3. SMOP 11 SO 261 this hq, CS, relating to awd of GCMDL to MSGT JOLLY R MCCLURE, AF38469492, 338th BomSq, 96th BomWgM, SAC, this sta as reads: "Cl *w/2* lps" IATR "Cl *w/3* lps."

4. TECHNICAL SGT CHARLES A REBER, AF1930 9756 (Utilization AFSC 43171) ASSIGNMENT: Is rel fr asg 96th PdMaintSq, 96th BomWgB, SAC, this sta; asg 1611th Air Terminal Sq, McGuire AFB, Wrightstown, N.J. for subq overseas asgmt to 3912th ABSq, APO 349, New York, NY.

REPORTING DATA: 35 days DALVP auth. Rept to Comdr, 1611th Air Terminal Sq, McGuire AFB, Wrightstown N.J. between 0830 and 1230 17 Jan 57 for Military Air Trans VIA Flight 441 on 17 Jan 57. EDCSA to 1611th Air Terminal Sq, 17 Jan 57; to 3912th ABSq, APO 349, 1 Feb 57.

GENERAL INSTRUCTIONS: AFM 35-6 will be complied with. All mail will be addressed to show grade, name, AFSN, 3912th Air Base Squadron, APO 349, New York, NY. AUTH: AFM 35-1f; AFM 35-6 & Ltr Hq SAC, DPAMA, Subj: Withdrawal of Warrant Officers and Air-

men for Foreign Service Assignment, dtd 4 Sep 56. Amn is vol for this asgmt.

TRANSPORTATION: WP on or abt 6 Dec 56. Baggage will be shipped IAW AFR 75-33. Baggage will be addressed to show grade, name, AFSN, 1611th Air Terminal Squadron, McGuire AFB, Wrightstown, N.J. POV for shipment overseas will be turned into Cavens Point Army Terminal, Jersey City, N.J. TPA with 7 days tvl time auth. If POV is not used, tvl time will be the time of the common carr used. PCS TDN: 5773500 048-132 P531.9-02-03 S99-999; (dislocation other) 5773500 048-246 P514-01 S99-999. Concurrent tvl of depns is prohibited. M/A on lv is 4249 Canterbury Rd., Riverside, California.

AIR MOVEMENT DESIGNATOR US-18-3D-6591-AF1 SAC/TAD/0115/7048. Baggage for Air Movement will not exceed 65 pds, baggage will accompany passenger to APOE.

5. SMOP 1 SO 264 this hq, CS, relating to asgmt of SSGT JONATHAN H FISCHER, AF 13413422, 96th Fld MaintSq, 96th BomWgM, SAC, this sta to 3912th ABGru, APO 349, New York, NY reads: "SSGT JOHATHAN H FISCHER" IATR "SSGT JONATHAN H FISCHER."

6. SMOP 6SO 268 this hq, CS, relating to asgmt of A/3C WILL H BROWNLEE, AF 17436209, 96th InstlSq, 96th ABGru, SAC, this sta to 10th Air Division, APO 942, Seattle, Washington as reads: "*(Utilization AFSC 56430 OJT-C)*" IATR "*(Utilization AFSC 56430)*".

7. A/2C NORMAN HAROLD CLARK, AF18472153 (YOB 1936) (Prim AFSC 77150), Perm Res Gr A/2C is rel fr asg 96th APSq, 96th ABGru, SAC, this sta, and fr AD eff 26 Nov 56. HOR 2913 Hunter St., Ft. Worth, Texas. Amn is trf to AFRes in gr of A/2C with DR 1 Dec 55 and asg Hq CONAC, (IRS), Air Res Res Cen, 3800 York St., Denver, Colo eff 27 Nov 56, for compl of Res Svc Oblg under Univ Mil Tng and Svc Act IAW AFR 39-63. DOE 7 Oct 54. CS TDN: 5773500 048-242 P514-01 S99-999; 5773500 048-141 P531.11-02-03 S99-999. AUTH: Para 3b, AFR 39-13 and 4th Ind Hq 15AF, dtd 15 Nov 56 to basic ltr fr A/2C CLARK, dtd 9 Oct 56, Subj: Request for Hardship Dis-

charge. (SDN 227). M/A 4613 Panola St., Ft. Worth, Texas.

8. A/B CONNIE POLK BEACH, AF14595419, is rel fr asg 96th Armt & ElctMaintSq, 96th BomWgM, SAC, this sta, and disch under hon cond eff 26 Nov 56. HOR—P.O. Box 744, Walterboro, South Carolina. DD Form 257AF w/b issued. PCS TDN: 5773500 048-242 P514-01 S99-999; 5773500 048-141 P531.11-02-03 S99-999. AUTH: Para 4b AFR 39-12 and 4th Ind, Hq 15AF dtd 16 Nov 56 to basic ltr fr Comdr, 96th Armt & ElctMaintSq, dtd 17 Oct 56, Subj: Request for Discharge. (SDN 225).

9. A/1C WILLIAM JACKSON JR, AF18384622, is rel fr asg 96th Armt & ElctMaintSq, 96th BomWgM, SAC, this sta, and disch under other than hon cond eff 24 Nov 56. TRO will furn trans in kind to HOR—Box 203, Langston, Oklahoma, or if req by A/1C JACKSON and appr by UCom, to another place prov cost does not exceed cost of trans to HOR. DD Form 258AF w/b issued. PCS TDN: 5773500 048-242 P514-01 S99-999. AUTH: AFR 39-22. (SDN 284). M/A—Oklahoma State Penitentiary, McAlester, Okla.

BY ORDER OF THE COMMANDER:

BUDD H HAMENDE
Maj, USAF
ADJ

Official
L. C. STUCKER
L. C. Stucker
CWO, W-3, USAF
ASTADJ

DISTRIBUTION:

10 Compt
5 Ea indiv para 7, 8 & 9
40 Ea indiv para 4, 5 & 6
4 Ea indiv para 1, 2 & 3
1 Pst10 3912th ABSq
1 Pst10 3912th ABGru

1 Pst10 10th Air Div
1 Ea 201 File
1 BPM
1 File
1 TSCT

(READ Insert No 4 in the items below which are not applicable)

PERSONAL DATA

1. LAST NAME - FIRST NAME - MIDDLE NAME: Jackson, William Jr
2. SERVICE NUMBER: AF 18 384 622
3. GRADE, RATE OR RANK: A/1C (P)
4. DATE OF BIRTH: 2 [illegible] 33
5. RESERVE OR COMPONENT AND BRANCH OF CLASS: REGULAR AIR FORCE
6. PLACE OF BIRTH (City and State or Country): Langston, Oklahoma
7. DATE OF BIRTH: DAY 16, MONTH June, YEAR 36
8. NAME: Hagroid
9. SEX: Male
10. COLOR HAIR: black; COLOR EYES: brown; WEIGHT: 5'9"; HEIGHT: 173; 11. U.S. CITIZEN: Yes; 12. MARITAL STATUS: Married
13. HIGHEST CIVILIAN EDUCATION LEVEL ATTAINED: High School 4 yrs
14. MAJOR COURSE OF FIELD: Academic

TRAINING OR DISCHARGE DATA

15. TYPE OF TRANSFER OR DISCHARGE: Discharge
16. STATION OR INSTALLATION AT WHICH EFFECTED: Altus Air Force Base, Oklahoma
17. REASON AND AUTHORITY: (AFM 39-4) CONVICTION OF CIVIL COURT AFM 39-2.
18. EFFECTIVE DATE: DAY 24, MONTH Nov, YEAR 56
19. LAST UNIT ASSIGNED AND MAJOR COMMAND: 96th ARMT&CTMAINT Sqdn (SAC)
20. UNDER OTHER THAN HONORABLE CONDITIONS
21. TYPE OF CERTIFICATE: DD Form 256 AF

SELECTIVE SERVICE DATA

22. SELECTIVE SERVICE NUMBER: Not Applicable
23. SELECTIVE SERVICE LOCAL BOARD NUMBER (City, County and State): Not Applicable
24. DATE INDUCTED: DAY [illegible], MONTH [illegible], YEAR Not Applicable
25. DISTRICT OR AREA COMMAND TO WHICH RESERVIST TRANSFERRED: Not Applicable

SERVICE DATA

26. TERMINAL DATE OF RESERVE OBLIGATION: DAY Not, MONTH Applicable, YEAR
27. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION — a. SOURCE OF ENTRY: ENLISTED (First Enlistment) ☐ ENLISTED (From Inactive Reserve) ☐ REENLISTED ☐ OTHER
28. TERM OF SERVICE (Years): 6
29. DATE OF ENTRY: DAY 7, MONTH June, YEAR 55
30. PRIOR REGULAR ENLISTMENTS: One
31. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE: A/1C
32. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State): Altus AFB, Oklahoma
33. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County and State): box 203, Langston, (Logan), Oklahoma
34. a. PAY PURPOSES — (1) NET SERVICE THIS PERIOD: 0 YEARS, 10 MONTHS; (2) OTHER SERVICE: 4 YEARS, 0 MONTHS; (3) TOTAL (Items (1) + (2)): 4 YEARS, [illegible] MONTHS; b. TOTAL ACTIVE SERVICE: 4 YEARS, [illegible] MONTHS; c. FOREIGN AND/OR SEA SERVICE: 0 YEARS, 0 MONTHS, 0 DAYS
35. a. SPECIALTY NUMBER AND TITLE: 64151 Br Orgn Sup Spec; b. RELATED CIVILIAN OCCUPATION AND TITLE: Stock Clerk 1-38.01
36. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN OR EXPEDITIONARY RIBBONS AWARDED OR AUTHORIZED: None
37. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date, if known): None
38. SERVICE SCHOOLS OR COLLEGES, COLLEGE TRAINING COURSES AND/OR POST GRADUATE COURSES SUCCESSFULLY COMPLETED

a. SCHOOL OR COURSE	b. DATES (From - To)	c. MAJOR COURSES	d. OTHER SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED
None	None	None	None

VA DATA

39a. GOVERNMENT LIFE INSURANCE IN FORCE: ☐ YES ☒ NO
b. AMOUNT OF ALLOTMENT: Not Applicable
c. MONTH ALLOTMENT DISCONTINUED: Not Applicable
39b. VA BENEFITS PREVIOUSLY APPLIED FOR (Specify type): Not Applicable
c. VA CLAIM NUMBER: Not Applicable

TRANSFER OR DISCHARGE DATA

1a. TYPE OF TRANSFER OR DISCHARGE: Discharge

2. STATION OR INSTALLATION AT WHICH EFFECTED: Altus Air Force Base, Oklahoma

3. REASON AND AUTHORITY: (SWE 284) CONVICTION OF CIVIL COURT AFR 39-2.

4. DATE: 26 Nov 56

5. LAST DUTY ASSIGNMENT AND MAJOR COMMAND: 966th ARMT/ELCTMAINT Sqdn (SAC)

6. UNDER CONDITIONS OTHER THAN HONORABLE: CONDITIONS

7. TYPE OF SEPARATION: DD Form 258 AF

SELECTIVE SERVICE DATA

8. SELECTIVE SERVICE NUMBER: Not Applicable

9. SELECTIVE SERVICE LOCAL BOARD NUMBER (City, County and State): Not Applicable

10. DATE INDUCTED: Not Applicable

11. DISTRICT OR AREA COMMAND TO WHICH RESERVIST TRANSFERRED: Not Applicable

SERVICE DATA

12. TERMINAL DATE OF RESERVE OBLIGATION: Not Applicable

13a. CURRENT ACTIVE SERVICE OTHER THAN BY INDUCTION — b. SOURCE OF ENTRY: ☐ ENLISTED (First Enlistment) ☐ ENLISTED (Prior Service) ☐ RECALLED ☐ OTHER

14. TERM OF SERVICE (Years): 6

15. DATE OF BIRTH: 7 May 35

16. PRIOR REGULAR ENLISTMENTS: One

17. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE: A/1C

18. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State): Altus AFB, Oklahoma

19. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County and State): box 203, Langston, (Logan), Oklahoma

20a. SPECIALTY NUMBER AND TITLE: 64151 Sr Orgn Sup Spec

20b. RELATED CIVILIAN OCCUPATION AND DOT NUMBER: Stock Clerk 1-38.01

21a. STATEMENT OF SERVICE

	YEARS	MONTHS	DAYS
(1) NET SERVICE THIS PERIOD	0	10	20
(2) OTHER SERVICE	1	0	0
(3) TOTAL (Items (1) + (2))	1	10	20
b. TOTAL ACTIVE SERVICE	1	10	20
c. FOREIGN AND/OR SEA SERVICE	0	0	0

22. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: None

23. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and date): None

24. SERVICE SCHOOLS OR COLLEGES: COLLEGE TRAINING, COURSES AND/OR POST GRADUATE COURSES SUCCESSFULLY COMPLETED

a. SCHOOL OR COURSE	b. DATES (From - To)	c. MAJOR COURSES	25. OTHER SERVICE TRAINING COURSES SUCCESSFULLY COMPLETED
None	None	None	None

VA DATA

26a. GOVERNMENT LIFE INSURANCE IN FORCE: ☐ YES ☒ NO

b. AMOUNT OF ALLOTMENT: Not Applicable

c. MONTH ALLOTMENT DISCONTINUED: Not Applicable

27a. VA BENEFITS PREVIOUSLY APPLIED FOR (Specify type): Not Applicable

b. VA CLAIM NUMBER: C-Not Applicable

AUTHENTICATION

28. REMARKS: blood Type "O" Pos. 26 days lost under Sec 6(a) App 2b M.M 1951. AUS: Pvt 6 Mch 4, Elect 3, Tech Sp 5. Not auth MOI. Not auth pay for 8 days accrdg. PRSD: 6 Jan 55. NAS, 22 Jul 55, Adm OSI DET.

29. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County and State): Oklahoma State Penitentiary, McAlester, Oklahoma

30. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED

30a. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER: ERNEST S BROGDON, 1st Lt., USAF, PERS OFF

b. SIGNATURE OF OFFICER AUTHORIZED TO SIGN

DD FORM NOV 48 214

REPLACES EDITION OF 1 JUL 52 WHICH IS OBSOLETE AFTER 1 JULY 1956

ARMED FORCES OF THE UNITED STATES REPORT OF TRANSFER OR DISCHARGE

(1-29)

130 *AFR 32-22
1-4

Air Force Regulation No. 39-22 — Department of the Air Force, Washington, 23 September 1953

ENLISTED PERSONNEL

Disposition of Airmen Convicted by Civil Court or Adjudged Wayward Minors, Youthful Offenders, or Juvenile Deliquents

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1. Purpose and Scope. This Regulation outlines the conditions for discharge or retention in the service of airmen, who subsequent to enlistment, are convicted by civil court, or adjudged wayward minors, youthful offenders, or juvenile delinquents. This Regulation applies to male and female enlisted personnel on active military service. Gen-

*This Regulation supersedes AFR 39-22, 19 July 1949, including Change 39-22A, 29 January 1953.

eral provisions covering the discharge of enlisted personnel and a list of other Regulations in this series are contained in AFR 39-10.

2. Discharge Authority. Except as otherwise provided, officers exercising discharge authority as specified in AFR 39-10, are authorized to direct discharge under this Regulation.

3. Jurisdiction. The command to which an airman is assigned or from which he has been dropped from the rolls as a deserter, will assume jurisdiction for further action under this Regulation, when report is received of an airman's arrest or confinement by civil authorities on a charge of committing a civil offense. Redesignation of an airman's organization after he has absented himself without leave or has been dropped from the rolls as a deserter, does not relieve the command concerned of jurisdiction for further action in the case. However, where the airman's organization has been inactivated or has departed for an oversea base, or where he has been dropped from the rolls as a deserter by an oversea replacement center, the commander of the prisoner receiving station nearest to the place of airman's arrest or confinement, will assume jurisdiction. When an airman in the latter category is held by civil authorities of a foreign country other than the one in which his organization is bound, the Director of Military Personnel, Headquarters USAF, will designate the command which will assume jurisdiction.

4. Upon Receipt of Report of Arrest. When information is received that an airman is being held by civil authorities charged with the commission of a civil offense, the disposition of which is pending, a communication will be sent to civil authorities advising of airman's status and arranging for his return to Air Force control in the event it is determined by civil authorities that he should not be brought to trial, or if tried and acquitted. The communication to civil authorities also will request advice regarding the following:

a. Actual charges.

b. Circumstances in the case.

c. Maximum punishment possible.

d. Final disposition, and if sentence imposed, exact nature thereof, and if confinement imposed, place thereof. (The final judgment or order of the court ordinarily will contain all of the required information. Wherever practicable, therefore, an effort should be made to obtain a copy of the judgment or order.)

e. Whether disposition constitutes conviction or adjudication as a wayward minor, youthful offender, or juvenile delinquent.

f. Any other information considered necessary.

131 5. Upon Conviction of Offenses Punishable by Death or Imprisonment for More than One Year. Except as provided in b below, the general policy will be to discharge an airman with an undesirable discharge under this Regulation where the airman has been convicted by civil court of an offense punishable by death or imprisonment for more than 1 year. Consent of airman to such discharge or recourse to board proceedings is unnecessary, except as provided in a below. This policy does not apply to an airman who has been adjudged a wayward minor, youthful offender, or juvenile delinquent regardless of the offense committed or whether the adjudication constituted a conviction by civil court in the jurisdiction concerned. Disposition of such an airman is covered in paragraph 7.

a. *Members of Reserve Components.* If the convicted airman is a member of a Reserve component on extended active duty and his sentence does not include confinement in a Federal or State penitentiary or correctional institution, or he has not been absent without leave (AWOL) for at least 3 months, discharge under conditions other than honorable may be effected under this Regulation only pursuant to the approved findings of a board of officers or when the airman consents to discharge under this Regulation with waiver of board proceedings (sections 249(b) and (c), P. L. 476, 82d Cong., Armed Forces Reserve Act of 1952—contained in AFBul 16, 1952).

(1) If neither the confinement nor AWOL condition exists and the Reserve airman consents to discharge under this Regulation, he will be requested to submit a signed statement as follows: I hereby agree to accept an undesirable discharge because of conviction by civil court, under AFR 39-22, and waive my rights to have my case considered by a board of officers. I understand that my separation from the Air Force effected by undesirable discharge will be under conditions other than honorable; that I may be deprived of all rights as a veteran under both Federal and State legislation; and that I may expect to encounter substantial prejudice in civil life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing.

(2) If the Reserve airman refuses to submit the signed statement prescribed in (1) above, a board of officers will be convened by the officer exercising discharge authority and its findings and recommendations submitted to the convening authority regarding the matter. The membership of the board will include a majority of officers of Reserve components, if available. In any instance where a majority of Reserve component members is not available, the board will include not less than one Reserve component officer (section 254(a), P. L. 476, 82d Cong.).

(3) Where it is necessary to convene a board of officers as prescribed in (2) above and the Reserve airman is in civil confinement, he will be furnished notice of hearing by the board. The proceedings will be conducted in his absence if his appearance in person is precluded because of his detention by civil authorities.

b. *Waivers.* There are isolated cases involving airmen convicted by civil court of offenses punishable by death or imprisonment for more than 1 year, which may warrant an exception to the prescribed discharge policy. Any such case may be submitted to the Director of Military Personnel, Headquarters USAF, Washington 25, D. C., with recommendation for waiver. Exceptions to policy should not

be recommended, however, unless the facts and circumstances of a particular case are of sufficient merit to warrant consideration for retention in the Air Force.

(1) Normally, the initial responsibility for recommending an exception to the general discharge policy will rest with the airman's immediate commander, and where jurisdiction has been assumed by the commander of a prisoner receiving station, with the officer designated to process the case for disposition.

(2) Any recommendations for waiver will be submitted to the discharge authority, with a complete report of the offense committed, circumstances involved, maximum punishment possible and actual sentence imposed. In addition, the discharge authority will be furnished a copy of any available report of investigation, military or civilian, conducted incident to the commission of the offense. A complete report of the character of Air Force service rendered by the airman prior to the conviction will also be made available.

(3) If the discharge authority disapproves the recommendation for waiver, he may authorize discharge action in accordance with prior provisions of this Regulation. Where the discharge authority approves the recommendation for retention, he will note his concurrence and remarks and forward the complete file to the commander of the major air command, who will in turn forward it, with his recommenda-
132 tion to the Director of Military Personnel, Headquarters USAF, for final determination.

(4) Pending final decision on a waiver case, no action will be taken by any military authorities to assure civil authorities that the airman concerned will be retained in the service, nor will civil authorities be requested to terminate or suspend any form of civil custody which may have been imposed.

(5) If the final decision in a waiver case provides for retention of the airman in the service, the civil authorities will then be advised of the decision. If the airman is in civil confinement, arrangements will be made for his return to Air Force control upon release

from confinement in the normal course of events, provided that upon such release any form of existing civil custody or restraint, such as parole or probation, will be completely terminated or at least suspended by civil authorities for the duration of the airman's Air Force service. Similar request for termination or suspension of custody or restraint will be made where the airman concerned is under military control at time of waiver decision, and a period of civil custody or restraint is still outstanding against him.

(6) In requesting termination or suspension of civil custody or restraint the civil authorities will be advised that in general, civil custody or restraint restrictions arising from probation or parole status are incompatible with the Air Force requirement to exercise complete jurisdiction over the airman.

(7) Termination or suspension of civil custody or restraint is an acceptable solution to the problem. Where the civil authorities refuse either condition, a report thereof will be furnished the Director of Military Personnel, Headquarters USAF.

6. Upon Conviction of Offenses Not Punishable by Death or Imprisonment for More Than One Year. An airman convicted by civil court of an offense not punishable by death or imprisonment for more than one year will not be subject to discharge under this Regulation. When an airman so convited is required to undergo a period of civil confinement, a detainer will be lodged with the civil authorities and suitable arrangements made for airman's return to Air Force control upon release from confinement. If the convicted airman is a femal a report of the facts in the case will be furnished the Director of Military Personnel, Headquarters USAF, regardless of whether the sentence provided for confinement, probation, and/or payment of fine, except that such report need not be furnished if the offense consisted of a minor traffic violation.

7. Upon Disposition as a Juvenile. An airman adjudged a wayward minor, youthful offender or juvenile delinquent will not be subject to discharge under this Regulation regardless of the offense committed or whether disposition

constituted a conviction by civil court in the jurisdiction concerned. Where the airman is required to undergo a period of civil confinement, a detainer will be lodged with the civil authorities and suitable arrangements made for airman's return to Air Force control upon release from confinement, except that the following action may be taken to effect discharge, if applicable:

a. If airman is eligible for discharge for minority under AFR 39-12, action may be initiated, if considered appropriate, to effect such discharge.

b. If the offense or offenses committed (for example, acts of sexual perversion or narcotic violations) show the person morally unsuited for military service and/or the airman is required to undergo a period of civil confinement in excess of 1 year, action may be taken to effect discharge under AFRs 39-16 or 39-17, as determined appropriate. Where action is initiated to effect discharge under either AFRs 39-16 or 39-17 and airman is in civil confinement, he will be furnished notice of hearing by the board. The proceedings will be conducted in his absence if his appearance in person is precluded due to detention by civil authorities. Should the airman be a member of a Reserve component, the membership of the board will be constituted as provided in paragraph 5a(2).

3. Upon Conviction by Civil Court of a Foreign Country. When an airman convicted by a civil court of a foreign country may be subject to discharge under this Regulation by reason of such conviction, final discharge action will not be taken. A complete report of the case will be submitted to the Director of Military Personnel, Headquarters USAF, who will determine whether and when discharge will be effected. Appropriate instructions as to disposition will thereupon be furnished the commander concerned.

9. Upon Return to Air Force Control After Civil Court Action. An airman subject to discharge due to pertinent provisions of this Regulation who, after adverse civil court action, returns to Air Force control at a base other than where his unit of assignment (or former unit of assignment, if the airman was dropped from the rolls) is located,

may be processed for discharge at the base of re-
133 turn, when such action will avoid unnecessary expenditures incident to discharge. The determination on whether discharge should be effected at the base of return to Air Force control will rest with the command exercising jurisdiction in the case, as outlined in paragraph 3.

10. Court-Martial Action. Notwithstanding this Regulation, a detainer may be lodged with the civil authorities in the case of any airman undergoing civil confinement, for the purpose of instituting court-martial proceedings, upon return to Air Force control, if such action is determined appropriate. Any recommendation to this effect, if approved by the discharge authority, will be submitted to the officer exercising general court-martial jurisdiction over the command concerned, for his determination.

11. Type of Discharge Certificate Furnished. An airman discharged under this Regulation, due to conviction by civil court of an offense punishable by death or imprisonment for more than 1 year, will be furnished DD Form 258 AF, "Undesirable Discharge." An airman discharged under other Regulations referred to in this Regulation (AFRs 39-12, 39-16, or 39-17) will be furnished the type of discharge certificate authorized under the Regulation concerned.

12. Disposition of Discharge Papers When in Civil Confinement. In those instances in which the airman is in civil confinement, the discharge certificate, airman's copy of report of separation, and copy of orders authorizing discharge, will be mailed by registered mail, return receipt requested, to the head of the institution in which the airman is confined, for delivery to the airman. The letter to the institution of confinement will identify the airman by Air Force name and service number, prison name if different from name in Air Force, and prison number.

13. Notation in Service Record. When an airman is discharged under this Regulation, a notation will be made under the remarks section of the service record as provided in paragraph 18d, AFR 31-10, 23 June 1953, which will show the offense of which convicted, sentence imposed,

date of sentence, if known, and name and address of institution in which confined.

14. Proper Completion of Cases Required. Field commanders exercising jurisdiction for final action are urged to maintain a suspense on cases being monitored under this Regulation to insure completion of final action. Experience has shown that failure to maintain a suspense results in lost or uncompleted cases or excessive delay after receipt of a report showing an airman in civil confinement.

15. Miscellaneous. The following are answers to questions often arising during processing under this Regulation:

a. The option of discharging an airman under paragraph 5 of this Regulation, due to conviction by civil court, is not a continuous one. For example, where fact of conviction is known to Air Force authorities upon return to military control of an airman subject to discharge under this Regulation, immediate action should be taken to effect discharge or waiver. If the required action is not taken and the airman is continued in the service, although fact of the conviction is known, such continuation in the service may be construed as a constructive waiver. After such automatic waiver, no action may be taken at an unreasonably later date to process airman for discharge due to conviction by civil court.

b. Where an airman is subject to discharge under this Regulation as well as under AFR 39-21, for fraudulent enlistment, and discharge action is considered appropriate, discharge normally should be effected for fraudulent enlistment. Upon such discharge, the enlistment contract is voided and the airman is not entitled to payment of any arrears of pay and allowances.

c. An airman who has been dropped from the rolls as a deserter under AFR 35-73, or as an absentee under prior regulations, and who is confined by civil authorities at time of discharge, need not be reported as a gain prior to discharge nor reported as a loss upon discharge. See AFM 171-6.

d. It is unnecessary to obtain the signature of an airman on DD Form 214, "Report of Separation from the Armed Forces of the United States," when discharge is effected while he is in civil confinement.

e. An airman discharged while in civil confinement does not receive a physical examination prior to discharge.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

OFFICIAL: N. F. TWINING
Chief of Staff, United States Air Force

K. E. THIEBAUD
Colonel, USAF
Air Adjutant General

DISTRIBUTION:
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134 CHANGE AFR 39-22A
8-9

Air Force Regulation No. 39-22A

Department of the Air Force
Washington, *21 January 1955*

ENLISTED PERSONNEL

Disposition of Airmen Convicted by Civil Court or Adjudged Wayward Minors, Youthful Offenders, or Juvenile Delinquents

AFR 39-23, 23 September 1953 is changed as follows:

* * * * * * * * * * *

8. Upon Conviction by Civil Court of a Foreign Country:

a. *Policy.* An airman convicted by civil court of a foreign country will normally be discharged if the offense is punishable by death or imprisonment for more than 1 year. Such airmen will be discharged in the United States, except when discharge outside the United States is approved by the Chief of Staff, USAF.

b. *Procedures.* If the offense is punishable by death or imprisonment for more than 1 year in the jurisdiction concerned, a complete report will be prepared as outlined in c

below. The report will be forwarded through channels to the Director of Military Personnel, Headquarters USAF, Washington 25, D. C., for appropriate disposition instructions. Recommendations for discharge or waiver will be included. The individual will be kept on the rolls of his assigned organization until disposition instructions are received. When an airman is convicted of an offense not punishable by death or imprisonment for more than 1 year, commanders will take action under paragraph 6.

c. *Report to be Furnished.* The report submitted to the Director of Military Personnel, Headquarters USAF, will include the following:

(1) Charges or accusations against the individual.

(2) Circumstances involved; and, if available, a copy of each report of investigation of the charges conducted by military or civilian authorities.

(3) Maximum punishment possible under the jurisdiction concerned, actual sentence imposed, and status of any appeals made by the airman.

(4) Maximum punishment possible under the Uniform Code of Military Justice.

(5) A copy of the judgment or order of the court.

(6) A copy of the report of the military observer or other official United States observer assigned to the trial.

(7) Whether the convicted airman is under military control, under civil restraint such as parole or probation, or in civil confinement; and anticipated date of release from restraint or confinement.

(8) Whether airman has paid any fine and/or damage included in the sentence of the court.

(9) Whether the foreign jurisdiction may be expected to object to the return of the convicted airman to the United States when he:

(a) Is under civil restraint, such as parole or probation, or

(b) Has failed to pay any fine or damages.

(10) A summary of the military record of the convicted airman, to include the following:

(a) Statement of service, including summary of prior service; date and period of current entry on active duty or current enlistment; and time lost, if any, under MCM 1951, Section 6(a), Appendix 2b (formerly AW 107) during current period of service.

(b) Convictions by courts-martial during current period of service.

(c) Whether airman has been recommended for demotion action under AFR 39-30 or for appearance before a board of officers under AFRs 35-62, 35-66, 39-16, or 39-17.

(d) Character and efficiency ratings during current period of service.

(e) Any other information pertinent to the case.

9. Upon Return to Air Force Control After Civil Court Action:

a. *Release by United States Civil Authorities.* When an airman subject to discharge under this Regulation returns to Air Force control at a base other than where his unit of assignment is located, he may be discharged at that base to avoid unnecessary expense. The commander exercising jurisdiction in the case will determine whether airman should be discharged there or returned for disposition at the base of his unit of assignment.

b. *Release by Foreign Civil Authorities.* When an airman subject to discharge under paragraph 8 returns to Air Force control from confinement in a foreign penal institution, he will be assigned to a unit of the receiving installation. A report of his return to military control will be forwarded to the Air Adjutant General, Headquarters

USAF, ATTENTION: Military Personnel Records Division, Washington 25, D. C., by most expeditious means.

BY ORDER OF THE SECRETARY OF THE AIR FORCE:

OFFICIAL: N. F. TWINING
Chief of Staff, United States Air Force

E. E. TORO
Colonel, USAF
Air Adjutant General

DISTRIBUTION
S

Filed Mar. 29, 1961
Court of Claims

136 **Exhibit No. 3**

WILLIAM JACKSON, JR. vs. *U. S.*

AFFIDAVIT

State of Missouri
County of Jackson, ss

Bernard D. Craig, of lawful age, after being duly sworn, on his oath, states that he is duly licensed to practice law in the State of Missouri, and resides at 1019 West 69th Street, Kansas City, Missouri.

Affiant further states in his capacity as attorney and agent for William Jackson, Jr. he prepared and mailed the original of the enclosed copy of letter dated June 4, 1958, to United States Air Force Base, Altus, Oklahoma, to the attention of the Commanding General, advising that the conviction in a civil court of William Jackson, Jr., Air Force No. AF 18 384 622 had been set aside by the Supreme Court of the State of Oklahoma, and the case remanded to the District Court at Altus, Oklahoma for new trial and that, thereafter, the case was dismissed for the reason that the facts and evidence were not sufficient to prove William Jackson, Jr. guilty and did not form a sufficient basis for a conviction; that William Jackson, Jr. desired to make application for revocation of his discharge and for reinstatement in the Air Force with back pay since the date of his discharge, all as more particularly set forth in the copy of said letter of June 4, 1958, which is hereto attached.

Dated at Kansas City, Missouri, this 20th day of September, 1960.

BERNARD D. CRAIG
Bernard D. Craig

Subscribed and sworn to before me this 20th day of September, 1960.

MILDRED M. STOLL
Notary Public

My Commission Expires: February 7, 1964.

137 June 4, 1958

United States Air Force
Altus Air Force Base
Altus, Oklahoma

Attention: Commanding General

Re: William Jackson, Jr. AF 18 384 622 (A/1C(P)

Honorable Sir:

The above was given a discharge under other than honorable conditions, DD Form 258AF, on November 24, 1956, by reason of conviction of Civil Court AFR 39-22 (ADN-284).

Subsequently this case was reviewed by the Supreme Court of the State of Oklahoma and the conviction set aside and the case remanded to the District Court for a new trial. Thereafter the case against the above was dismissed for the reason that the facts and evidence were not sufficient to prove the defendant guilty and did not form a sufficient basis for a conviction.

Mr. Jackson now desires to make application for a revocation of his discharge and for reinstatement in the Air Force with back pay to be allowed him since the date of his discharge.

This letter is being directed to you as the discharge originated from your command, and I would appreciate your forwarding any documents necessary for Mr. Jackson to sign and file with you to petition for a revocation of the discharge and reinstatement in the Air Force with back pay.

Very truly yours,

Bernard D. Craig

BDC:fb

138 IN THE UNITED STATES COURT OF CLAIMS

No. 403-60

WILLIAM JACKSON, JR. v. THE UNITED STATES

Opinion of the Court on Plaintiff's and Defendant's Motions For Summary Judgment By Laramore, Judge—Jan. 12, 1962

Charles D. Ablard for plaintiff.

Charles M. Munnecke, with whom was *Assistant Attorney General William H. Orrick, Jr.*, for defendant.

ON PLAINTIFF'S AND DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT

LARAMORE, *Judge*, delivered the opinion of the court

Plaintiff, an enlisted man in the Air Force, seeks judgment for pay and allowances from the date of his allegedly unlawful discharge.

Plaintiff re-enlisted in the United States Air Force on December 7, 1955. On November 16, 1956, plaintiff was convicted by a civil court of the State of Oklahoma, after a trial without jury on a plea of guilty, of the crime of rape in the second degree, and was sentenced to serve a term of five years' confinement in the Oklahoma State Penitentiary.

Plaintiff then filed a motion to vacate judgment, which was overruled. An appeal was taken to the Court of Criminal Appeals of the State of Oklahoma, which reversed and vacated the judgment on the ground that plaintiff had been denied his right of counsel. On remand to the District Court, the proceedings were dismissed.

On November 24, 1956, plaintiff was discharged from the United States Air Force under other than honorable conditions.

On June 4, 1958, plaintiff by his attorney, wrote the Altus Air Force Base, Oklahoma, seeking the reinstatement
239 of the plaintiff. This application was subsequently abandoned, and plaintiff applied to the Air Force

Board for Correction of Military Records. A hearing was held by the Board on September 16, 1959, and on April 28, 1960, the Board rendered a decision denying plaintiff's application. That decision was approved by the Secretary of the Air Force.

Plaintiff's complaint is twofold; first, that Air Force Regulation 39-22, under which plaintiff was discharged, was an unreasonable and arbitrary regulation; and second, that the action of the Secretary of the Air Force in denying the application of plaintiff was arbitrary and capricious.

Air Force Regulation 39-22, dated September 23, 1955, under which plaintiff was discharged, provides in pertinent part, as follows:

> 5. Upon Conviction of Offenses Punishable by Death or Imprisonment for More than One Year. Except as provided in b below, the general policy will be to discharge an airman with an undesirable discharge under this Regulation where the airman has been convicted by civil court of an offense punishable by death or imprisonment for more than 1 year * * *.

It can readily be seen that this regulation provides in clear language that upon conviction the general policy is to discharge an airman with an undesirable discharge. This action was taken, and it is this regulation that plaintiff contends is unreasonable and arbitrary.

Perhaps standing alone this regulation might seem to be unreasonable when the airman's conviction is later reversed and, upon remand, dismissed. However, Air Force Regulation 39-22 further provides:

> * * * immediate action should be taken to effect discharge or waiver. If the required action is not taken and the airman is continued in the service, although fact of the conviction is known, such continuation in the service may be construed as a constructive waiver. After such automatic waiver, no action may be taken at an unreasonably later date to process airman for discharge due to conviction by civil court. [15.a.]

It is noted that the above portion of the regulation provides that immediate action should be taken and, further, if no such action is taken and the airman is continued in the service, although the fact of the conviction is known, such continuation in the service may be construed as a waiver. The regulation further provides that no action can be taken at an unreasonably later date to discharge due to a conviction.

This last portion of the regulation sheds light on the action taken by the Air Force in discharging plaintiff shortly after his conviction.

Plaintiff would have the Air Force continue him in the service, in this case a year and a half, until his appeal could be determined. What then if the conviction were allowed to stand? Not only would the Air Force have continued in service an undesirable airman, but under the regulation the action could amount to a waiver precluding any later action to process the airman for discharge due to conviction.

In these circumstances we can see nothing arbitrary or unreasonable about the regulation in question. As a matter of fact, we think the regulation provided a reasonable safeguard whereby the Air Force could protect itself against continuing an airman in the service when the circumstances warranted his removal.

Plaintiff's reference to new Air Force Regulations 39-22, published April 14, 1959, wherein it is provided that the general policy will be to withhold execution of an approved discharge pending outcome of an appeal has little, if any relevancy to this case, since it was published after plaintiff's discharge.

The fact that the regulation does not contain a provision which would be applicable to an airman in the event his conviction was reversed on appeal, does not affect the validity of the regulation or the legality of his discharge. *Cf. McMullen* v. *United States*, 100 Ct. Cl. 323, cert. denied, 321 U.S. 790.

Plaintiff's second contention is that the decision of the Correction Board, and the approval by the Secretary of the Air Force in denying plaintiff's application, was arbitrary and capricious.

In respect to the above, and in the light of our holding that the regulation is not arbitrary or unreasonable, the decision of the Correction Board and the approval by the Secretary in denying plaintiff's application could not be arbitrary or capricious. The Board correctly re-
141 jected plaintiff's contention. Furthermore, the Board specifically indicated that, notwithstanding the fact that there no longer was a valid conviction, their overall impression of the plaintiff's testimony and the entire record was such that plaintiff was not a fit person for reinstatement. The Board stated in its findings:

> Whatever the merits of his case may have been they have been dissipated by his failure to be completely truthful and straightforward in his testimony before the Board. The action, or lack of action, by this Board upon applicant's request can neither add to nor detract from any legal rights he may have with respect to his case. On the other hand this Board is not required to afford equitable relief if relief be merited when such relief is forfeited by the deliberate acts of the applicant.

Thus, it can readily be seen that the correction Board did give consideration to plaintiff's reasons for believing he should be reinstated. However, as stated by this court in *Peterson* v. *United States*, No. 83-59, decided July 19, 1961:

> • • • Apparently they were not compelling to the Board, and it seems to us that this in itself refutes the plaintiff's claim that the Board's action was arbitrary, capricious, or unlawful.

In taking action denying plaintiff's application, the Secretary of the Air Force was acting under a statute which says that a Secretary may correct a record when he considers it necessary to correct an error or to remove an injustice. 10 U.S.C. § 1552(a) (1952 Ed.) Under this statute the Secretary was vested with discretionary powers to take action when he considered it necessary. We cannot say that this discretion was abused and, consequently, the action of the Correction Board in denying plaintiff's application and the Secretary's approval of this action was not arbitrary, capricious or unlawful.

For the foregoing reasons, plaintiff's motion for summary judgment is denied, and defendant's cross-motion is granted. Plaintiff's petition will be dismissed.

It is so ordered.

Reed, *Justice* (*Ret.*), sitting by designation; Durfee, *Judge*, and Jones, *Chief Judge*, concur.

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142 IN THE UNITED STATES COURT OF CLAIMS

115-56 SCRIPTURE PRESS FOUNDATION, INC.
123-60 ARLENE COATS
174-60 ROBERT C. DOWLING
341-60 GEORGE S. RHODES
403-60 WILLIAM JACKSON, JR.

v.

THE UNITED STATES

Order of the Court Overruling Plaintiff's Motion for Rehearing April 4, 1962

These cases come before the court on motions for relief from judgment, rehearing or reconsideration under Rules 53 and 54 of the rules of this court and, on consideration thereof,

IT IS ORDERED this fourth day of April, 1962, that said motions be and the same are overruled as follows:
115-56 Scripture Press Foundation, Inc. Plaintiff's motion.
123-60 Arlene Coats. Plaintiff's motion.
174-60 Robert C. Dowling. Defendant's motion.
341-60 George S. Rhodes. Plaintiff's motion.
403-60 William Jackson, Jr. Plaintiff's motion.

BY THE COURT

/s/ MARVIN JONES
Marvin Jones
Chief Judge

143 SUPREME COURT OF THE UNITED STATES

Order Granting Motion for Leave to Proceed In Forma Pauperis and Petition For Writ of Certiorari—Nov. 13, 1962

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Claims.

ON CONSIDERATION of the motion for leave to proceed in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 586 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

November 13, 1962

☆ U. S. GOVERNMENT PRINTING OFFICE 1962—669081/P O 863

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659465—62

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 237 Misc.

WILLIAM JACKSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR CERTIORARI

OPINION BELOW

The opinion of the Court of Claims is reported at 297 F. 2d 939.

JURISDICTION

The judgment of the Court of Claims was entered on January 12, 1962. A timely petition for rehearing was denied April 4, 1962. The petition for a writ of certiorari was filed on July 3, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether, as applied to the circumstances of his case, Air Force Regulation 39–22 violated petitioner's constitutional or statutory rights.

STATUTES AND REGULATION INVOLVED

10 U.S.C. 8811, 1552, and Air Force Regulation 39–22 are set forth in the Appendix, *infra*, pp. 8–10.

STATEMENT

On November 16, 1956, while serving in the Air Force, petitioner was convicted on a plea of guilty in the District Court of Jackson County, Oklahoma, of the crime of rape in the second degree. He was sentenced to serve a term of five years confinement in the state penitentiary (R. 1, 7).

On November 24, 1956, petitioner was discharged from the Air Force under other than honorable conditions pursuant to Air Force Regulation 39–22, dated September 23, 1953, *infra*, pp. 8–9. Thereafter, on December 22, 1956, petitioner filed a motion in the State district court to vacate the judgment of conviction. This motion was denied on January 8, 1957 and on January 9, 1957, petitioner appealed to the Oklahoma Court of Criminal Appeals (R. 2, 7). On September 20, 1957, more than eleven months after his conviction, the Court of Criminal Appeals vacated the judgment on the ground that petitioner had been denied his right to counsel, and remanded the cause to the district court for a new trial. *Jackson* v. *State*, 316 P. 2d 213. On May 6, 1958, on remand, the proceedings were dismissed at the County Attorney's instance (R. 2, 7–8).

By letter dated June 4, 1958, petitioner, through his attorney, advised the Air Force for the first time of his appeal and of the reversal of his conviction (R. 8). He then filed an application with the Air

Force Discharge Review Board for revocation of his undesirable discharge and reinstatement in the Air Force, basing his claim on the decision of the Court of Criminal Appeals and the subsequent dismissal of the criminal case (Pl. Ex. 1, Tab A). This application was subsequently abandoned, however, and petitioner applied to the Air Force Board for the Correction of Military Records for the same relief and, additionally, back pay (Pl. Ex. 1, Tab C). A hearing was held by the Board on September 16, 1959, and, on April 28, 1960, petitioner's application was denied (Pl. Ex. 1, Tab E). The Correction Board was of the view that, whatever the merits of petitioner's case may have been, they had been dissipated by his failure to be completely truthful and straightforward in his testimony before the Board. This decision was approved by the Secretary of the Air Force on the same date (Pl. Ex. 1, Tab F).

Thereafter, petitioner brought this suit in the Court of Claims to recover pay and allowances from the date of his discharge, alleging that he was unlawfully discharged from the United States Air Force, and that, in any event, the action of the Secretary of the Air Force denying his application for reinstatement and back pay was arbitrary and capricious (Pet. 5).

The Court of Claims held that Air Force Regulation 39–22, under which petitioner was discharged, was not arbitrary or unreasonable, but provided a safeguard whereby the Air Force could protect itself against continuing an airman in service when the circumstances warranted his removal. The court also

rejected petitioner's contention that the decision of the Correction Board and the approval by the Secretary of the Air Force were arbitrary and capricious. It held that, in denying petitioner's application, the Secretary was acting pursuant to his statutory authority to correct an error or to remove an injustice, that this is a discretionary function, and that the discretion had not been abused in the premises.

ARGUMENT

Following the filing of the petition for a writ of certiorari, and at the instance of the Solicitor General who deemed it might be required by law, the Secretary of the Air Force has authorized the correction of petitioner's discharge, so as to reflect that it was an honorable discharge. Petitioner's counsel has been advised that, upon application, petitioner will be granted an honorable discharge certificate in lieu of the undesirable discharge which he originally received.

In the circumstances, the sole question is whether, upon the reversal of his conviction, petitioner had a constitutional or statutory right to more than the removal of the stigma attaching to the original discharge; *i.e.*, to be restored to the active rolls of the Air Force with back pay. We submit that, as the court below concluded, the answer is clearly in the negative, and that there is therefore no occasion for further review by this Court.

1. As previously noted, petitioner's discharge was effectuated under the authority of Air Force Regulation 39–22, *infra*, pp. 8–9, following his conviction in a state court of the crime of rape. That regulation reflected

a policy of immediately discharging a serviceman upon his conviction in a civil court of an offense punishable by imprisonment for more than one year.

We submit there can be no serious question respecting the right of the military establishments to take such action in the interest of the efficiency of the service. When a person is convicted of a felony "a garb of guilt" immediately attaches and this presumption is not removed by the taking of an appeal. It is certainly a reasonable judgment on the part of the military authorities that the retention on the rolls of a serviceman convicted of a serious crime will impair morale and discipline. Moreover, in many instances (as here), the conviction is followed by immediate incarceration by the civil authorities with the consequence that the serviceman is, as a practical matter, disabled from performing his military duties.[1]

2. Petitioner's principal attack upon Air Force Regulation 39–22 is directed to the absence of any provision for automatic reinstatement of the serviceman to the active rolls in the event that his convic-

[1] Air Force regulation 39–22 was superseded on April 14, 1959, by a new regulation, *infra*, pp. 9–10, which establishes a general policy of suspending the execution of an approved discharge based upon a conviction by a civil court pending the outcome of an appeal from the conviction. To be sure, the regulation in its present form provides that if the conviction is set aside, the discharge will not be carried out. We do not think that it can be seriously asserted, however, that the decision to separate a serviceman immediately following his conviction is unreasonable, especially when (as here) the circumstances provide good reason to doubt that he is morally suitable. Indeed, even now, Air Force Regulation 39–22 permits the immediate discharge of the serviceman in "appropriate cases" even though an appeal has been filed.

tion is set aside. However, petitioner's implicit assumption that a serviceman has a constitutional or statutory entitlement to this relief has no foundation.

It has never been suggested, to our knowledge, that the Constitution imposes an obligation upon the armed services to retain a serviceman until the expiration of his enlistment. The contract of a soldier of the United States, made by his enlistment and oath to serve for a definite term, is one terminable by the Government at will acting through an officer having proper authority. *Reid* v. *United States*, 161 Fed. 469 (S.D.N.Y.), appeal dismissed, 211 U.S. 529. "[T]his historical view of the soldier's relation to the * * * [state] antedates the founding of [our] nation and is the accepted doctrine of the British military establishment upon which ours was founded." *Ibid.*

Nor is there a basis for contending that the Secretary of the Air Force was under a statutory mandate to permit petitioner to serve the balance of his enlistment following the reversal of his conviction. 10 U.S.C. 8811 expressly authorizes the discharge of an enlisted member of the Air Force "as prescribed by the Secretary of the Air Force." Thus, Congress has left it to the Secretary to decide whether a particular serviceman should be permitted to complete his enlistment.

Air Force Regulation 39–22 does not purport to establish a rigid rule applicable to all servicemen in petitioner's circumstances. On the contrary, the regulation leaves open the question whether, upon the reversal of a conviction, the serviceman is to receive a certificate of honorable discharge or is to be reinstated for the duration of his enlistment term. It is

neither arbitrary nor unreasonable to commit this determination to the exercise of the Secretary's discretion on a case-to-case basis.

As is implicitly recognized in 10 U.S.C. 8811, the Secretary must have wide latitude in deciding whether to remove from the rolls servicemen who (even though not guilty of punishable conduct) detract from the efficiency of the service. The same, if not greater, latitude is indicated where the question is one of restoring to the active rolls a man whose connection with the service has already been interrupted.[2]

In sum, the most that petitioner was entitled to as a matter of right was to have the stigma on his military record removed when, because of the reversal of his conviction, there was no longer a basis for a punitive discharge. As already noted, he will be issued an honorable discharge upon application.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

JOSEPH D. GUILFOYLE,
Acting Assistant Attorney General.

ALAN S. ROSENTHAL,
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Attorneys.

OCTOBER 1962.

[2] Perhaps the Secretary, under his authority to "remove an injustice," 10 U.S.C. 1552, should have corrected petitioner's discharge to reflect that it was an honorable one. But no such relief was requested of him or the Correction Board. In any event, that issue is now mooted.

APPENDIX

1. 10 U.S.C. 8811 provides:

> **Air Force enlisted members: discharge certificate; limitations on discharge**
>
> (a) A discharge certificate shall be given to each lawfully inducted or enlisted member of the Air Force upon his discharge.
>
> (b) No enlisted member of the Air Force may be discharged before his term of service expires, except—
>
> (1) as prescribed by the Secretary of the Air Force;
>
> (2) by sentence of a general or special court-martial; or
>
> (3) as otherwise provided by law.

2. 10 U.S.C. 1552 in pertinent part provides:

> (a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

3. Air Force Regulation 39–22, dated September 23, 1953 in pertinent part provides:

> 5. **Upon Conviction of Offenses Punishable by Death or Imprisonment for More than One Year.** Except as provided in b below, the gen-

eral policy will be to discharge an airman with an undesirable discharge under this Regulation where the airman has been convicted by civil court of an offense punishable by death or imprisonment for more than 1 year. * * *

* * * * *

15. **Miscellaneous.** * * *

a. The option of discharging an airman under paragraph 5 of this Regulation, due to conviction by civil court, is not a continuous one. For example, where fact of conviction is known to Air Force authorities upon return to military control of an airman subject to discharge under this Regulation, immediate action should be taken to effect discharge or waiver. If the required action is not taken and the airman is continued in the service, although fact of the conviction is known, such continuation in the service may be construed as a constructive waiver. After such automatic waiver, no action may be taken at an unreasonably later date to process airman for discharge due to conviction by civil court.

4. Air Force Regulation 39–22, dated April 14, 1959, in pertinent part provides:

2. **The Conditions Which Subject an Airman to Discharge.** An airman is subject to discharge for misconduct under this regulation upon conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year; or which involves moral turpitude * * *

* * * * *

11. **Appeals of Airmen to Civil Court Disposition.** An airman subject to discharge under this Regulation may be processed for discharge or waiver even though he has filed an appeal to the civil court action in his case or has stated his intention of doing so. However,

it will be the general policy to withhold the execution of an approved discharge pending outcome of the appeal. In the event the appeal results in the conviction being set aside the airman will not be discharged under this Regulation, although he may be considered for discharge under other regulations, if appropriate, as outlined in paragraph 12. In the event the execution of a discharge under this Regulation is considered appropriate, without awaiting outcome of an appeal, the case will be referred to the Director of Military Personnel, Headquarters, USAF, for a decision.

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No. [redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

[redacted]

WILLIAM JACKSON, JR., *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*

BRIEF FOR THE PETITIONER IN REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 237 Misc.

WILLIAM JACKSON, JR., *Petitioner*,

v.

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BRIEF FOR THE PETITIONER IN REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR CERTIORARI

ARGUMENT

The argument of the Respondent as to whether the Air Force should have been required to retain Petitioner in the service after his conviction by the Oklahoma district court because of some contractual relationship is irrelevant. Petitioner has not contended that this was required.[1]

What Petitioner has contended is that the Air Force was under an obligation to reinstate him upon reversal and vacation of conviction by the Court of Criminal Appeals of Oklahoma when he was discharged pursuant to a regulation which authorized discharge only for that one reason—criminal conviction by a civil court.

[1] Although Petitioner does not contend that there is a contractual relationship requiring completion of enlistment, it is strange that Respondent would rely as its only judicial authority on a 1908 opinion which has the following language, obviously long since modified by this Honorable Court, pertaining to the character of discharges:

> "The exact method of this soldier's discharge and the quantum or kind of character that should be given him, not being regulated by statute, must necessarily be left in the discretion of the executive officer having power to grant some kind of discharge. That it is beyond the power of the judicial branch to coerce or review the discretion of the executive is familiar doctrine, while that a discharge with a very bad character is not a punishment to the man discharged . . . is settled . . ." *Reid* v. *U.S.*, 161 F. 469 (S.D., N.Y., 1908)

Respondent also seems to be arguing that the Air Force *could* have proceeded in some other manner pursuant to some other regulation to discharge Petitioner with an honorable discharge. While possibly the Respondent *could* have proceeded in such a manner (although Petitioner's record was unblemished), the fact is that it did not so proceed, but instead elected to proceed under AFR 39-22. The thrust of Petitioner's argument is that, notwithstanding the fact that AFR 39-22 did not then provide for the contingency of a reversal on appeal and indicated a policy of immediate discharge of the serviceman upon conviction, the Air Force was obligated to reinstate him upon vacation of this conviction by an appellant court.

The fact that the Respondent has now, at this late date, seen the unfairness of its action toward the Petitioner and will now accord him an honorable discharge does not detract from the ultimate issue in the case—whether the Air Force was under an obligation to reinstate the Petitioner. It is an admission of weakness in Respondent's position.

Respondent states at page 6 of its Brief that AFR 39-22 "does not purport to establish a rigid rule applicable to all servicemen" but that the regulation leaves open the question of whether the serviceman might be given an honorable discharge or reinstated. In fact, the only version of AFR 39-22 which Respondent could have in mind is the inapplicable version of AFR 39-22 promulgated in 1959 since the 1953 regulation under which Petitioner was discharged provided either for discharge under less than honorable conditions, retention in the Air Force by waiver, or possible discharge under honorable conditions under *another* regulation.

This Court should take cognizance of the fact that the United States Navy still follows essentially the same regulation as was in effect for the Air Force at the time of the discharge of Petitioner. (Appendix A.) In that regulation the Navy states that "an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed". Thus, the problem

is a continuing one and will be so long as any military service follows the same policies as the Air Force did in the instant case. There is tremendous public interest in this case[2] because *inter alia*, Navy personnel are still being deprived of their constitutional rights pursuant to a comparable regulation.

Respondent states at page 2 of its Brief that Petitioner "advised the Air Force for the first time of his appeal and of the reversal of his conviction" on June 4, 1958. It was on June 4, 1958, that Petitioner first requested an honorable discharge, reinstatement and back pay through his attorney, Bernard J. Craig, Esq., of Kansas City, Missouri. (Appendix B) The question of timely notice of appeal to the Air Force was not raised in the briefs of either party in the Court of Claims.

Petitioner has attached to this brief an affidavit from Amos T. Hall, Esq. of Tulsa, Oklahoma, who was Petitioner's attorney during the proceedings in Jackson County, Oklahoma. (Appendix C) In Mr. Hall's affidavit of December 1, 1961, he states that "On or about November 19, 1956, he contacted the Office of the Judge Advocate of the Altus Air Force Base at Altus, Oklahoma and advised them that he was going to file a motion for a new trial and take an appeal on behalf of William Jackson, Jr." This was approximately 3 days after the conviction by the state district court and 5 days before Petitioner was discharged. Mr. Hall also states that he asked the Judge Advocate at Altus AFB to withhold Petitioner's discharge. If Respondent now contends that the issue of notice is important (which Petitioner does not concede), then certainly the notice afforded by Counsel for Petitioner at this early stage of the proceedings should have been sufficient to have placed the Air Force on notice of Petitioner's intent to appeal from the decision of the trial court.

Petitioner has never contended that the Air Force is

---

[2] Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U. S. Senate, pursuant to S. Res. 260, 87th Congress, 2nd Session, on Constitutional Rights of Military Personnel. (Committee Print, pp. 158 and 763)

under any contractual obligation. Petitioner contends only that the Air Force is bound by its own regulations. *Service* v. *Dulles*, 354 U.S. 363 (1957). The Air Force elected to proceed pursuant to AFR 39-22 and not another regulation. As such it is bound by that regulation. AFR 39-22 provided that Petitioner could only be discharged for conviction of a felony. That conviction was reversed and vacated because Petitioner's constitutional right to counsel was denied him. Therefore, Petitioner's discharge should have been modified to reflect an honorable discharge for the period he was out of the Air Force and he should also have been reinstated. At that time, the Air Force might have proceeded to discharge him pursuant to another regulation but this procedure it did not follow. Respondent has cited no regulation that might have been applicable.

To modify the type of discharge at this late date without affording the Petitioner the other relief to which he is entitled makes a mockery of the Air Force discharge procedures pursuant to this regulation. It is a poorly disguised attempt to avoid the type of issue raised in *Harmon* v. *Brucker*, 355 U.S. 579 (1958), and to keep this entire matter from being considered on the merits by this Honorable Court. Petitioner has been stigmatized for six years, being deprived of veteran benefits and suffering loss of job opportunities, wages and other losses. These efforts of Respondent are doubtless similar to the type of legerdemain which caused Lord Chief Justice Mansfield to opine, "It seems fairly obvious that the quest was not for truth but for victory." quoted in *U.S.* v. *Otley*, 34 F. Supp 182, 188 (D. C., Ore. 1940).

Respectfully submitted,

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APPENDIX A

BUREAU OF NAVAL PERSONNEL MANUAL
PART C

C-10312. *Discharge of Enlisted Personnel by Reason of Misconduct*

(1) . . .

(2) The Chief of Naval Personnel may direct the discharge of an enlisted person for misconduct in any of the following cases:

(a) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor or youthful offender as a result of an offense involving moral turpitude. If the offense is not listed in the MCM Table of Maximum Punishments or is not closely related to an offense listed therein, the maximum punishments authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies. For the purpose of this subparagraph only, an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed.

APPENDIX B

June 4, 1958

United States Air Force
Altus Air Force Base
Altus, Oklahoma

Attention: Commanding General
Re: William Jackson, Jr. AF 18[illegible]884 622 A/1C(P)

Honorable Sir:

The above was given a discharge under other than honorable conditions, DDForm 258AF, on November 24, 1956, by reason of conviction of Civil Court AFR 39-22(ADN-284).

Subsequently this case was reviewed by the Supreme Court of the State of Oklahoma and the conviction set aside and the case remanded to the District Court for a new trial. Thereafter the case against the above was dismissed for the reason that the facts and evidence were not sufficient to prove the defendant guilty and did not form a sufficient basis for a conviction.

Mr. Jackson now desires to make application for a revocation of his discharge and for reinstatement in the Air Force with back pay to be allowed him since the date of his discharge.

This letter is being directed to you as the discharge originated from your command, and I would appreciate your forwarding any documents necessary for Mr. Jackson to sign and file with you to petition for a revocation of the discharge and reinstatement in the Air Force with back pay.

Very truly yours,

BERNARD D. CRAIG

BDC:fb

APPENDIX C

AFFIDAVIT

STATE OF OKLAHOMA }
} ss
COUNTY OF TULSA }

Amos T. Hall, of lawful age, after being duly sworn on his oath, states that he is an attorney at law, licensed to practice in the State of Oklahoma, with offices at 121 North Greenwood in the City of Tulsa, Oklahoma; that he was attorney for William Jackson, Jr. at the time William Jackson, Jr. was discharged from the United States Air Force on or about November 24, 1956, under less than honorable conditions and given an undesirable discharge certificate for the reason that said William Jackson, Jr. had been convicted by a civil court of the crime of rape; that this affiant appealed said case to the Court of Criminal Appeals of the State of Oklahoma, which resulted in the conviction being reversed and vacated for the reason that Williams Jackson, Jr. was unconstitutionally deprived of his right of counsel at the time of trial, which case was reported as *Jackson* v. *State*, 316 P. 2d 213; that at the time the trial or purported trial of William Jackson, Jr., took place in the District Court of Jackson County, Oklahoma, the case had been set for trial on November 19, 1956, but for some reason unknown to this affiant, the said William Jackson, Jr. was brought before the court prior thereto on November 16, 1956, without this affiant being present, and said William Jackson, Jr. was found guilty and sentenced to five years in the penitentiary; that when this affiant did arrive in Altus, Oklahoma, in the District Court of Jackson County, Oklahoma, and learned of what had taken place, he immediately decided to file a motion for new trial, and at that time on or about November 19, 1956, he contacted the office of the Judge Advocate of the Altus Air Force Base at Altus, Oklahoma, and advised them that he was

going to file a motion for new trial and take an appeal on behalf of William Jackson, Jr., and upon being advised that William Jackson, Jr. was going to be discharged, he asked them to withhold discharging William Jackson, Jr. for the reason that he was going to file this motion for new trial and take this appeal, if necessary; that this affiant does not recall the name or names of the persons he talked to at the office of the Judge Advocate at the Altus Air Force Base at Altus, Oklahoma, but he recalls distinctly that he did contact them and did talk to one or more men in that office and stated that he was going to file a motion for new trial and take an appeal for William Jackson, Jr. and asked them to hold up on any contemplated discharge of William Jackson, Jr. until after ruling had been obtained on the motion for new trial or, if it were overruled, on the appeal which he told them was going to be filed; that the facts set forth in this affidavit are true and correct to the best knowledge, information and belief of this affiant.

Dated at Tulsa, Oklahoma this 1st day of December, 1961.

(signed) AMOS T. HALL
Affiant

Subscribed and sworn to before me this 1st day of December, 1961.

(signed) ODESSA L. WOODS
Notary Public

My Commission Expires: Sept. 23, 1962.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 586

WILLIAM JACKSON, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF FOR THE PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 586

WILLIAM JACKSON, JR.,

Petitioner,

vs.

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Respondent.

BRIEF FOR THE PETITIONER

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

William Jackson, Jr., Petitioner herein, by his attorneys, prays that the decision of the Court of Claims in the above case be reversed.

Opinion Below

The opinion of the Court of Claims (R. 112) granting Respondent's motion for summary judgment is reported at 297 F. 2nd 939 (1962).

Jurisdiction

Petitioner brought this action for relief in the Court of Claims pursuant to 28 U.S.C. §1491. Petitioner requested the Court of Claims to reconsider its opinion rendered January 12, 1962. The Court of Claims denied reconsideration

on April 4, 1962. The Petition for a Writ of Certiorari was timely filed; and was granted on November 13, 1962, 371 U.S. 900 (1962) (R. 71). The jurisdiction of the Court rests upon 28 U.S.C. §1255(1).

Questions Presented

1. Whether Air Force Regulation 39-22 under which Petitioner was discharged from the Air Force was applied in an unreasonable and arbitrary manner inasmuch as a vacated state court conviction was the sole basis for his discharge, and thus Petitioner's rights under the 1st, 5th and 6th Amendments to the Constitution of the United States were abridged?

2. Whether the action of the Secretary of the Air Force in denying the application of Petitioner for reinstatement was arbitrary and capricious and resulted in a denial of the rights of Petitioner under the 1st, 5th and 6th Amendments to the Constitution of the United States?

3. Whether the action of the Secretary of the Air Force in refusing to reinstate Petitioner in the Air Force after the state conviction was vacated was in violation of the 1st Amendment to the Constitution of the United States?

Regulations Involved

Air Force Regulation 39-22 promulgated on September 23, 1953:

> "Sec. 5. *Upon Conviction of Offenses Punishable by Death or Imprisonment for More than One Year.* Except as provided in (b) below, the general policy will be to discharge an airman with an undesirable dis-

charge under this Regulation where the airman has been convicted by civil court of an offense punishable by death or imprisonment for more than 1 year. Consent of airman to such discharge or recourse to board proceedings is unnecessary, except as provided in (a) below. This policy does not apply to an airman who has been adjudged a wayward minor, youthful offender, or juvenile delinquent regardless of the offense committed or whether the adjudication constituted a conviction by civil court in the jurisdiction concerned. Disposition of such an airman is covered in paragraph 7.

* * * * *

SEC. 15. MISCELLANEOUS: The following are answers to questions often arising during processing under this Regulation:

(a) The option of discharging an airman under paragraph 5 of this Regulation, due to conviction by civil court, is not a continuous one. For example, where fact of conviction is known to Air Force authorities upon return to military control of an airman subject to discharge under this Regulation, immediate action should be taken to effect discharge or waiver. If the required action is not taken and the airman is continued in the service, although fact of the conviction is known, such continuation in the service may be construed as a constructive waiver. After such automatic waiver, no action may be taken at an unreasonably later date to process airman for discharge due to conviction by civil court" (R. 97).

Statement of the Case

Petitioner re-enlisted in the United States Air Force on December 7, 1955, in the grade of Airman First Class with over four years of prior service (R. 84). He was awarded the Good Conduct Medal on April 10, 1956. He had no record of previous convictions. He was stationed at Altus Air Force Base, Oklahoma (R. 95). On October 30, 1956, an information was filed in the District Court of Jackson County, Oklahoma, charging Petitioner, a Negro, with rape in the second degree of a white female fifteen years of age and on the same day a warrant was issued for his arrest. The trial was initially scheduled for November 19, 1956 but on November 16, 1956, Petitioner was convicted in the District Court of the crime as charged and was sentenced to serve a term of five years confinement in the Oklahoma State Penitentiary (R. 86).

Eight days later, on November 24, 1956, Petitioner was discharged from the United States Air Force under less than honorable conditions (R. 95) and furnished an undesirable discharge certificate,[1] pursuant to the provisions of Air Force Regulation 39-22 (23 September 1953) (R. 97). That regulation provided for administrative discharge of an airman convicted of a felony by a civil court.

Less than a month later, on December 22, 1956, a motion for a new trial was made. The motion was denied on January 8, 1957, by the District Court. On January 9, 1957, Petitioner noted an appeal to the Court of Criminal Appeals of the State of Oklahoma, the highest appellate court

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[1] In its Brief in Opposition to the Granting of the Petition for Certiorari, the Solicitor General stated that at his instance the Secretary of the Air Force had authorized the correction of Petitioner's discharge to an honorable discharge.

of criminal jurisdiction. On September 20, 1957, the Court of Criminal Appeals reversed and vacated the judgment and the sentence, holding that Petitioner had been unconstitutionally deprived of his right to counsel at the trial. *Jackson* v. *State*, 316 P. 2d 213 (1957). On May 6, 1958, the District Court dismissed the proceeding against Petitioner upon the motion of the County Attorney of Jackson County (R. 8).

On June 4, 1958, Bernard D. Craig, Esquire, of Kansas City, Missouri, Attorney for Petitioner, wrote to the Commander of the Altus Air Force Base, Oklahoma, seeking reinstatement of Petitioner in the Air Force, based upon the decision of the Court of Criminal Appeals (R. 110 and Appendix A). No favorable action was taken by the Commander and on November 4, 1958, an application was submitted to the Air Force Board for the Correction of Military Records in Washington, D. C. (R. 4). An amended application was submitted to the Board on February 9, 1959 (R. 9).

Proceedings Below

Administrative Proceedings

A hearing was held by the Board for the Correction of Military Records on September 16, 1959 (R. 18). On April 28, 1960, the Board rendered a decision denying the application of Petitioner (R. 16). That decision was approved by the Secretary of the Air Force (R. 17).

Judicial Proceedings

On October 19, 1960, Petitioner filed a petition in the Court of Claims alleging that Air Force Regulation 39-22 was unreasonable and arbitrary and that the action of the Secretary of the Air Force denying the application was

arbitrary and capricious. Petitioner requested pay from the date of discharge to the date of expiration of his enlistment.

On January 12, 1962, the Court of Claims granted Respondent's motion for summary judgment and denied Petitioner's motion for summary judgment (R. 112). The Court of Claims denied reconsideration on April 4, 1962 (R. 117).

ARGUMENT

A. Introduction

This case raises questions of fundamental importance concerning the rights of Armed Forces personnel, challenging the unconstitutional application of a regulation providing discharge for conviction of a felony when that conviction is subsequently vacated by an appellate court. It also challenges the action of the Secretary of the Air Force in failing to follow his own regulations and in failing to base his decision on substantial evidence. The decision of the Court of Claims below permits the United States to discharge a serviceman because of a civil conviction obtained by state authority through deprivation of his constitutional rights. This is permitted notwithstanding the fact that the State has admitted its unconstitutional conduct and vacated the conviction. It is unreasonable for the United States to permit such action to stand.

This Court, in *Harmon* v. *Brucker*, 355 U.S. 579 (1958), held that the Air Force cannot use evidence of misconduct prior to induction as the basis for an undesirable discharge. If an undesirable discharge for such reasons was invalid, then this regulation as here applied also must be invalid. The right to counsel, which was denied Petitioner, is one which this Court has consistently recognized under the 14th

Amendment to the Constitution. *Johnson* v. *Zerbst*, 304 U.S. 458 (1938); *Chewning* v. *Cunningham*, 368 U.S. 443 (1962).

B. The Stigma of the Undesirable Discharge

Petitioner's 1st Amendment rights were abridged when he was furnished an undesirable discharge and branded as a convicted felon for the past six years. Petitioner has been deprived of various governmental benefits.[*] The "badge of infamy" to which this Court referred in *Wieman* v. *Updegraff*, 344 U.S. 183, 191 (1952), has been imposed. The intangible harms done to Petitioner cannot be measured.

This Court has recognized the fact that such a discharge does result in a stigma attaching to its recipient and has imposed a high standard upon the military services for issuance of such discharges. *Harmon* v. *Brucker*, 355 U.S. 579, 582 (1958); *Beard* v. *Stahr*, 370 U.S. 41, 43 (1962) (Dissenting Opinion). Petitioner at this late date has been offered the right to have his discharge corrected to honorable as a result of the intervention of the Solicitor General with the Department of the Air Force, action tantamount to a confession of error as to that aspect of this case. This does not detract from the fact that he was given and still has an undesirable discharge with which he has been stigmatized for six years.

The United States has now admitted the unfairness of its action toward Petitioner and offers to give him an honorable discharge. This, however, does not detract from the ultimate issue in the case—whether the Air Force was under an obligation to reinstate Petitioner.

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[*] Mustering out payments, 38 U.S.C. §2101; Accumulated Leave, 37 U.S.C. §32; Civil Service Preference, 5 U.S.C. §851; Homestead Preference, 43 U.S.C. §279.

C. AFR 39-22, Under Which Petitioner Was Discharged, Was Unconstitutionally Applied to Petitioner

This regulation under which Petitioner was discharged provided only for the issuance of an undesirable discharge and for no other type or characterization. Although there is a provision for "waiver" at 5(b) of the regulation (R. 100-102), such waiver relates only to whether the serviceman will or will not be discharged and not to the type of discharge.

The Air Force has the power to discharge military personnel under its jurisdiction for various acts which do not result in trial by courts-martial. Air Force Regulation 39-22 provides, *inter alia*, for the administrative discharge of an airman convicted of an offense by civil authorities for which the prescribed punishment is imprisonment for over one year or death. The regulation was then silent on the effect of an appeal and subsequent reversal. The promulgator of the regulation ignored the possibility that a felony conviction might subsequently be reversed or vacated, thus permitting punishment based upon such a vacated conviction.

Recognizing that the regulation was unreasonable, the Secretary of the Air Force promulgated a new Air Force Regulation 39-22 on April 14, 1959, in which the following language was inserted:

> "It will be the general policy to withhold the execution of an approved discharge pending outcome of the appeal. In the event the appeal results in the conviction being set aside the airman will not be discharged under this regulation . . ."

Petitioner contends that this new version of the regulation no more than states the obvious, that a man should not be given an undesirable discharge, or in fact be discharged

at all, for a vacated conviction. What was made explicit in the April 14, 1959, regulation was constitutionally implicit in the earlier regulation under which Petitioner was discharged. However, even the amended regulation does not resolve the issue of whether the Air Force could base its action upon a vacated state conviction.

The Air Force has broad administrative powers to discharge its personnel. This authority was provided (10 U.S.C. 8811) by Congress "in the general interest of sound and reasonable personnel management and policy" for the Armed Forces. S. Rept. 1268, 80th Congress, 2nd Sess., p. 7 (1948). Various regulations have been promulgated pursuant to that authority through which the Air Force can discharge its personnel for misconduct, but these regulations were not invoked in this proceeding and in fact there was no basis for invoking them. Instead, the Air Force proceeded solely on the single issue of conviction by civil authorities. To permit the discharge to stand after the Air Force has so proceeded and after the conviction has been vacated results in a denial of the 1st Amendment rights of Petitioner. AFR 39-22 as applied to Petitioner was unconstitutional.

D. AFR 39-22, Under Which Petitioner Was Discharged, Was Unconstitutional in That It Did Not Afford Petitioner the Right to Confront and Cross-Examine His Accusers

Petitioner was denied the right to confront and cross-examine his accusers. The Court of Appeals of the District of Columbia has held that confrontation and cross-examination are prerogatives for the granting of discharges under less than honorable conditions. *Bland* v. *Connally*, 293 F. 2d 852 (1961); *Davis* v. *Stahr*, 293 F. 2d 860 (1961). The regulation pursuant to which Petitioner was discharged pro-

vided that an airman convicted of an offense punishable by death or imprisonment for more than one year would be discharged with an undesirable discharge and that "consent of airman to such discharge or recourse to broad proceedings is unnecessary, except as provided in (a) below" (R. 99). Subsection (a) was limited in its applicability to members of reserve components on extended active duty under certain circumstances. Those persons must either sign a waiver or they are afforded the right to appear before a board of officers.

Such an opportunity was not afforded Petitioner, who was a member of the regular and not a member of the reserve forces. Thus the regulation did not permit a hearing to afford the rights of cross-examination and confrontation as required by the Constitution nor in fact was one afforded to Petitioner. Cf. *Clackum* v. *U.S.*, 296 F. 2d 226 (1960).

E. Arbitrary and Capricious Action

1. *The Air Force Did Not Follow the Requirements of Its Own Regulations*

By not reinstating Petitioner, the Air Force has proceeded contrary to its own regulations because the conviction was the only basis upon which it could have discharged Petitioner. Petitioner contends that the Air Force is bound by its own regulations. *Service* v. *Dulles*, 354 U.S. 363 (1957). The Air Force elected to proceed pursuant to AFR 39-22 and not another regulation. Thus, it is bound by that regulation. AFR 39-22 provided only that Petitioner could be discharged with an undesirable discharge for conviction of a felony. The conviction for which Petitioner was discharged was reversed and vacated because Petitioner's constitutional right to counsel was denied him. Therefore, Petitioner should have been reinstated when he

requested it on June 4, 1958 (Appendix A). The Air Force did not follow the constitutionally implicit requirement that the Petitioner be reinstated once the conviction for which he was discharged was vacated.

2. *The Board for the Correction of Military Records Did Not Rely on Substantial Evidence*

The action of the Secretary approving the decision of the Air Force Board for the Correction of Military Records was arbitrary and capricious. The approval ignored the legal effect of the decision of the Court of Criminal Appeals of Oklahoma in vacating the conviction and the subsequent dismissal by the trial court. The Board based its decision neither on law nor substantial evidence.

The sole basis for Petitioner's discharge was the fact that he had been convicted of a felony by civil authorities. The action of the Air Force was based, and could only be based under the regulation, on a conviction and not on proof of an act which Petitioner might have done which led to that conviction. There was no ancillary hearing where independent evidence of an offense was produced. The Board for the Correction of Military Records sought to read into the regulation the power to hold such a hearing when it held a hearing at the administrative appellate level to try him for an offense under the laws of Oklahoma. It sought to do what could not have been done at the command level and certainly could not be done at the appellate level.

In view of the nature of the proceeding by which Petitioner was discharged and the applicable regulation, the only issue for Board consideration was whether Petitioner had been convicted and the effect of the decision of the Court of Criminal Appeals. Petitioner contends that the Air Force was under an obligation to reinstate him upon

reversal and vacation of conviction by the Court of Criminal Appeals of Oklahoma when he had been discharged pursuant to a regulation which authorized discharge only for that one reason—criminal conviction by a civil court. Failure to rely upon substantial evidence and failure to follow his own regulations by failure to order reinstatement rendered the decision of the Secretary arbitrary and capricious.

F. Alleged Waiver of Rights of the Air Force

The opinion of the Court below states that the Air Force could not have continued Petitioner in the service, for to do so, under §15 of the Air Force Regulation 39-22, *supra*, could have resulted in a waiver of the rights of the Air Force to discharge. The Court below thus permitted the Air Force by regulation to tie its hands and justify hasty action. In fact, even that regulation does not require such hasty action inasmuch as it only provides that no action may be taken after an unreasonable period of time. Surely a delay of the discharge until the time to note an appeal had passed would not be unreasonable. Petitioner moved for a new trial within thirty days, which surely was not an unreasonable period of time.

Petitioner contends that, notwithstanding the fact that AFR 39-22 did not then provide for the contingency of a reversal on appeal and indicated a policy of immediate discharge of the serviceman upon conviction, the Air Force was obligated to reinstate him upon vacation of this conviction by an appellate court.

G. The Present Policy in the Department of Defense

This Court should take cognizance of the fact that the United States Navy still follows essentially the same regulation in effect in the Air Force at the time of Petitioner's discharge (Appendix B). In that regulation, the Navy states that "an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed." Thus, the problem is a continuing one and will be so as long as any military service follows the same policies as the Air Force did in the instant case. Department of Defense Directive #1332.14 dated January 14, 1959, on the subject of Administrative Discharges, which is presently in effect, provides that,

> "... an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed" (Appendix C).

One might add: "Or even though the conviction is subsequently set aside on constitutional grounds." Department of Defense policy attempts to do what a court cannot do—"consider" a man a felon when he is not a felon. Military personnel are not second class citizens. A man is either "convicted" constitutionally or not. Constitutionally there can be no such thing as that category of inferior citizens who "shall be considered as having been convicted".

H. Notice to the Air Force of Intent to Appeal

Petitioner has attached to this brief an affidavit from Amos T. Hall, Esquire, of Tulsa, Oklahoma, who was Petitioner's attorney during the proceedings in Jackson County, Oklahoma (Appendix D). In Mr. Hall's affidavit of December 1, 1961, Mr. Hall states that "On or about November

19, 1956, he contacted the Office of the Judge Advocate of the Altus Air Force Base at Altus, Oklahoma and advised them that he was going to file a motion for a new trial and take an appeal on behalf of William Jackson, Jr." This was approximately three days after the conviction by the Oklahoma District Court and five days before Petitioner was discharged. Mr. Hall also states that he asked the Judge Advocate at Altus AFB to withhold Petitioner's discharge. If Respondent now contends that the issue of notice is important, which Petitioner does not concede, then the notice afforded by Counsel for Petitioner at this early stage of the proceedings should have been sufficient to have placed the Air Force on notice of Petitioner's intent to appeal from the decision of the trial court.

I. Summary

The history of this case from the day the information was filed against Petitioner is a series of grievous errors, refusals to admit error and belated compulsory corrections of error. A conviction unconstitutionally obtained was not set aside until an appellate court directed it be set aside. The information precipitously filed was not dismissed until a prosecutor was forced to proceed according to constitutional standards. A discharge characterized undesirable was not changed to honorable until this Court granted a writ of certiorari. Now there remains only one obstacle in the path of vindication and justice, for the Air Force has demonstrated it will not grant back pay and reinstatement as compensation for an illegal discharge until this Court forces it so to do.

This Court would not permit the United States Government to base a discharge upon unconstitutional state action if Petitioner had been discharged for violation of an un-

constitutional state statute prohibiting a Negro from eating in a state-owned restaurant facility. So likewise, if Petitioner had been convicted as a result of other unconstitutional state action, this Court would not permit a discharge to stand. Here, the State has proceeded in an unconstitutional manner depriving Petitioner of his right to counsel, a basic right guaranteed by the Constitution. The State has admitted its unconstitutional action. The Air Force at the insistence of the Solicitor General has partially admitted its error.

Yet the decision of the Court below sanctions unconstitutional state action as the sole basis for Federal action. Thus, the Federal Government would be permitted to deprive Petitioner of his rights under the 1st, 5th and 6th Amendments, which the State was not permitted to do. From whatever source the deprivation, Petitioner's rights are inviolate, and that deprivation must be struck down.

CONCLUSION

The judgment below should be reversed and summary judgment entered in favor of Petitioner.

Respectfully submitted,

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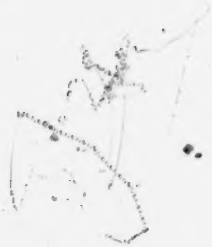
APPENDICES



APPENDIX A

June 4, 1958

United States Air Force
Altus Air Force Base
Altus, Oklahoma

Attention: Commanding General
Re: William Jackson, Jr. AF 18 384 622 A 1C (P)

Honorable Sir:

The above was given a discharge under other than honorable conditions, DDForm 258AF, on November 24, 1956, by reason of conviction of Civil Court AFR 39-22 (ADX-284).

Subsequently this case was reviewed by the Supreme Court of the State of Oklahoma and the conviction set aside and the case remanded to the District Court for a new trial. Thereafter the case against the above was dismissed for the reason that the facts and evidence were not sufficient to prove the defendant guilty and did not form a sufficient basis for a conviction.

Mr. Jackson now desires to make application for a revocation of his discharge and for reinstatement in the Air Force with back pay to be allowed him since the date of his discharge.

This letter is being directed to you as the discharge originated from your command, and I would appreciate your forwarding any documents necessary for Mr. Jackson to sign and file with you to petition for a revocation of the discharge and reinstatement in the Air Force with back pay.

Very truly yours,

BERNARD D. CRAIG

BDC:fb

APPENDIX B

BUREAU OF NAVAL PERSONNEL MANUAL PART C

C-10312. *Discharge of Enlisted Personnel by Reason of Misconduct*

(1) . . .

(2) The Chief of Naval Personnel may direct the discharge of an enlisted person for misconduct in any of the following cases:

(a) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor or youthful offender as a result of an offense involving moral turpitude. If the offense is not listed in the MCM Table of Maximum Punishments or is not closely related to an offense listed therein, the maximum punishments authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies. For the purpose of this subparagraph only, an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed.

APPENDIX C

Jan 14, 59
1332.14
ASD (MP & R)

DEPARTMENT OF DEFENSE DIRECTIVE

Subject: Administrative Discharges

• • • • •

J. *Misconduct.* Discharge by reason of misconduct, with an Undesirable discharge, unless the particular circumstances in a given case warrant a general or honorable discharge, when one or more of the following conditions have been determined:

1. Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year; or which involves moral turpitude; or where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender as a result of an offense involving moral turpitude. If the offense is not listed in the MCM Table of Maximum Punishments or is not closely related to an offense listed therein, the maximum punishments authorized by the U.S. Code or the District of Columbia Code, whichever is lesser, applies. For the purpose of this subparagraph only, an individual shall be considered as having been convicted even though an appeal is pending or is subsequently filed.

2. Procurement of a fraudulent enlistment, induction or period of obligated service through any deliberate material misrepresentation or concealment which, except for such misrepresentation or concealment, may have resulted in rejection.

3. Prolonged unauthorized absence. When unauthorized continuous absence of one year or more has been established but punitive discharge has not been authorized by competent authority.

• • • • •

APPENDIX D

AFFIDAVIT

STATE OF OKLAHOMA,
COUNTY OF TULSA, ss.:

Amos T. Hall, of lawful age, after being duly sworn on his oath, states that he is an attorney at law, licensed to practice in the State of Oklahoma, with offices at 121 North Greenwood in the City of Tulsa, Oklahoma; that he was attorney for William Jackson, Jr. at the time William Jackson, Jr. was discharged from the United States Air Force on or about November 24, 1956, under less than honorable conditions and given an undesirable discharge certificate for the reason that said William Jackson, Jr. had been convicted by a civil court of the crime of rape; that this affiant appealed said case to the Court of Criminal Appeals of the State of Oklahoma, which resulted in the conviction being reversed and vacated for the reason that William Jackson, Jr. was unconstitutionally deprived of his right of counsel at the time of trial, which case was reported as *Jackson* v. *State*, 316 P. 2d 213; that at the time the trial or purported trial of William Jackson, Jr., took place in the District Court of Jackson County, Oklahoma, the case had been set for trial on November 19, 1956, but for some reason unknown to this affiant, the said William Jackson, Jr. was brought before the court prior thereto on November 16, 1956, without this affiant being present, and said William Jackson, Jr. was found guilty and sentenced to five years in the penitentiary; that when this affiant did arrive in Altus, Oklahoma, in the District Court of Jackson County, Oklahoma, and learned of what had taken place, he immediately decided to file a motion for new trial, and at that time on or about November 19, 1956, he contacted the office of the Judge Advocate of the Altus Air Force Base at Altus, Oklahoma, and advised them that he was going to file a motion for new trial and take an appeal on behalf of William Jackson, Jr., and upon being advised that William Jackson, Jr. was going to be discharged, he asked

them to withhold discharging William Jackson, Jr. for the reason that he was going to file this motion for new trial and take this appeal, if necessary; that this affiant does not recall the name or names of the persons he talked to at the office of the Judge Advocate at the Altus Air Force Base at Altus, Oklahoma, but he recalls distinctly that he did contact them and did talk to one or more men in that office and stated that he was going to file a motion for new trial and take an appeal for William Jackson, Jr. and asked them to hold up on any contemplated discharge of William Jackson, Jr. until after ruling had been obtained on the motion for new trial or, if it were overruled, on the appeal which he told them was going to be filed; that the facts set forth in this affidavit are true and correct to the best knowledge, information and belief of this affiant.

Dated at Tulsa, Oklahoma this 1st day of December, 1961.

(signed) Amos T. Hall
Affiant

Subscribed and sworn to before me this 1st day of December, 1961.

(signed) Orissa L. Woods
Notary Public

My Commission Expires: Sept. 23, 1962.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 586

WILLIAM JACKSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the United States Court of Claims (R. 112–115) is reported at 297 F. 2d 939.

JURISDICTION

The judgment of the Court of Claims was entered on January 12, 1962. Petitioner's timely motion for a rehearing was denied on April 4, 1962. The petition for a writ of certiorari was filed on July 3, 1962, and was granted on November 13, 1962, 371 U.S. 900 (R. 117). The jurisdiction of this Court rests on 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether petitioner, a former enlisted man in the Air Force, is entitled to back pay on either of two grounds:

(1) That he was not validly discharged upon his conviction of a felony by civil authority; or,

(2) That he should have been reinstated upon the reversal of the conviction on appeal.

STATUTES AND REGULATIONS INVOLVED

The relevant provisions of 10 U.S.C. 1552 and 8811 are set forth in the appendix, *infra*, pp. 25–27. Air Force Regulation 39–22, dated September 23, 1953, is printed in the record at pp. 97–106. The present version of the same Regulation, effective April 14, 1959, is reproduced in pertinent part in the Appendix, *infra*, pp. 27–35.

STATEMENT

On November 16, 1956, while serving as an enlisted member of the Air Force, petitioner was convicted in the District Court for Jackson County, Oklahoma, on his plea of guilty to the crime of rape in the second degree. He was sentenced by the court to serve a term of five years in the State Penitentiary at McAlester, Oklahoma (R. 1, 86–87). Having recently re-enlisted for a six-year period, his term of service would normally have expired in December, 1961 (R. 95).

On November 24, 1956, petitioner was discharged from the Air Force under other than honorable conditions (R. 93, 95) and issued an "undesirable" certificate, pursuant to former Air Force Regulation 39–22,

dated September 23, 1953, which provided for the administrative discharge of airmen who, subsequent to their enlistment, were convicted by civil courts of offenses punishable by death or by imprisonment for more than one year.

On December 22, 1956, petitioner filed a motion in the Oklahoma district court to vacate the judgment of conviction and for a new trial. This motion was denied on January 8, 1957, and on January 9, 1957, petitioner appealed to the Criminal Court of Appeals of Oklahoma (R. 1). On September 20, 1957, eleven months after his conviction, the Criminal Court of Appeals vacated the judgment on the ground that petitioner had been denied his right to counsel and remanded the case to the State district court for a new trial. *Jackson* v. *State*, 316 P. 2d 213. On May 6, 1956, on remand, the proceedings were dismissed at the County Attorney's instance (R. 8-9).

By letter dated June 4, 1958, petitioner, through his attorney, advised the Air Force of these developments and requested the necessary forms to petition for reinstatement and back pay. (R. 111). He then filed an application, dated November 4, 1958, with the Air Force Discharge Review Board for revocation of his discharge and for reinstatement in the Air Force with back pay (R. 4). This application was subsequently abandoned,[1] however, and on February

[1] Petitioner presumably learned that the Correction Board alone could grant the relief sought. The Discharge Review Board has authority only to change the *character* of the discharge; it cannot revoke the discharge or order reinstatement. See 10 U.S.C. 1553; 32 C.F.R. 881.17(c).

9, 1959, petitioner applied to the Air Force Board for the Correction of Military Records for the same relief (R. 9–13).

The Board for the Correction of Military Records held a hearing on petitioner's application on September 16, 1959, and on April 28, 1960, announced its decision denying his application (R. 16). The Board found that, "[w]hatever the merits of [petitioner's] case may have been they have been dissipated by his failure to be completely truthful and straightforward in his testimony before the Board (R. 18, 23)." This decision was approved by the Secretary of the Air Force on the same day (R. 17).

Petitioner then instituted these proceedings in the Court of Claims. His complaint alleged that he had been illegally and unlawfully discharged from the Air Force and that the action of the Secretary in refusing to reinstate him and award him back pay was arbitrary and capricious. By way of relief, he sought pay and allowances from the date of his discharge (R. 2). The Court of Claims unanimously rejected petitioner's contentions and dismissed the suit (R. 112–116).

Following the filing of the petition for a writ of certiorari in this Court, and at the instance of the Solicitor General, the Secretary of the Air Force authorized the correction of petitioner's discharge to reflect that it was an honorable one.[2] Petitioner's

[2] The tender of an honorable discharge certificate was made *before* this Court granted certiorari (Brief for the United States in opposition to the petition for certiorari, p. 4), not afterwards, as petitioner states (Petitioner's Brief, p. 14).

counsel has been advised that, upon request, petitioner will be granted an honorable discharge certificate in lieu of the one he now holds. To date, petitioner has not applied for the honorable discharge certificate.

SUMMARY OF ARGUMENT

While the present suit seeks only recovery of back-pay since the date of petitioner's dismissal from the Air Force upon his civil conviction for statutory rape, the claim necessarily depends upon the validity of the original discharge or petitioner's right to retroactive reinstatement at a subsequent date.

I

The initial dismissal was effected pursuant to an Air Force Regulation then in force which prescribed the immediate dismissal of airmen convicted of a felony by a domestic civilian court. The Secretary of the Air Force is expressly empowered to promulgate procedures for the premature discharge of enlisted personnel before the expiration of their term of enlistment. The regulation in suit is, on its face, a reasonable exercise of that authority. Though it directs the issuance of an "undesirable" discharge certificate, its purpose is not punitive. The regulation embodies a policy of promptly separating convicted felons, not so much because they are felons, but because they will, in all probability, remain unable to serve for an extended period and because their retention would adversely affect morale and discipline. Under the circumstances, there can be no requirement of looking behind the civil court judgment or awaiting the outcome of a pending appeal.

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II

Assuming he was validly discharged, petitioner acquired no *right* to automatic reinstatement in the Air Force when his conviction was reversed by the state court. We assume he was then entitled to have his discharge certificate corrected. But that question is removed from the case by the Secretary's tender of an honorable discharge certificate. On the separate question of his retention in the Air Force, the original dismissal action was final as a matter of general law. The statute creating the Board for the Correction of Military Records merely *authorized* reinstatement in exceptional circumstances. But, before exercising its discretion to recommend such action, the Board must be persuaded that the airman is a fit candidate for the service. Petitioner, on the contrary, led the Board to the conclusion that he was untruthful. Its decision, after full hearing, was certainly not grossly arbitrary.

ARGUMENT

This is a suit for back-pay only. Yet, the claim necessarily rests on allegations that petitioner was improperly discharged from the Air Force in the first instance or that he was improperly refused reinstatement (retroactively or otherwise) upon reversal of the state court conviction which led to his original dismissal.

If the matter were *res nova,* we might question the propriety of demanding a money judgment without

first obtaining, or at least concurrently seeking, the reinstatement on which the pay claim depends. But, given the established jurisprudence apparently approving this procedure,[3] the burdensome problems resulting from the limited jurisdiction of the Court of Claims[4] and of the district courts,[5] and the peculiar history of this case, in which the judgment was rendered after petitioner's term of enlistment had expired,[6] we pass the question and turn to the underlying merits of the claim.

We first discuss the original discharge, and finding that action authorized, we address ourselves to the only remaining question, whether the Air Force was required to reinstate petitioner when his conviction was reversed on appeal.

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[3] See Brenner, *Judicial Review by Money Judgment in the Court of Claims*, 21 Fed. Bar J. 179 (1961), cited in *Glidden Company* v. *Zdanok*, 370 U.S. 530, 557 (opinion of Mr. Justice Harlan).

[4] The Court of Claims, of course, could not order reinstatement. Its jurisdiction is limited to the award of money judgments. 28 U.S.C. 1491; see *United States* v. *Jones*, 131 U.S. 1; *United States* v. *Sherwood*, 312 U.S. 584, 588; *Glidden Company* v. *Zdanok*, *supra*, at 537.

[5] The district courts are expressly barred from entertaining "[a]ny civil action or claim to recover fees, salary, or compensation for official services of officers or employees of the United States." 28 U.S.C. 1346(d)(2).

[6] We assume petitioner asserts no right to reinstatement after the expiration of his term of enlistment in December, 1961, and claims no pay after that date. Accordingly, the question of reinstatement was moot when the Court of Claims rendered judgment on January 12, 1962 (R. 112).

I

PETITIONER WAS VALIDLY DISCHARGED UPON HIS STATE COURT CONVICTION FOR STATUTORY RAPE

Petitioner was dismissed from the Air Force pursuant to an Air Force Regulation prescribing prompt discharge of airmen convicted of a felony by civilian authority. That regulation, we submit, was a reasonable rule, adopted by the Secretary under statutory authority in the interest of the efficiency of the service, and its application to petitioner deprived him of no constitutional rights.

There is, of course, no *constitutional* right to retain public office, once acquired, for any particular period. As this Court recently observed, citing many earlier precedents,[7] it "has become a settled principle that government employment, in the absence of legislation, can be revoked at the will of the appointing officer." *Cafeteria Workers* v. *McElroy*, 367 U.S. 886, 896. The principle applies to those in the military service of the United States. *McElrath* v. *United States*, 102 U.S. 426; *Blake* v. *United States*, 103 U.S. 227; *Crenshaw* v. *United States*, 134 U.S. 99; *Wallace* v. *United States*, 257 U.S. 541; *Reid* v. *United States*, 161 Fed. 469 (S.D. N.Y.), appeal dismissed, 211 U.S. 529; *McMullen* v. *United States*, 100 Ct. Cls. 323, certiorari denied, 321 U.S. 790.

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[7] *In the Matter of Hennen*, 13 Pet. 230, 246; *Crenshaw* v. *United States*, 134 U.S. 99, 108; *Parsons* v. *United States*, 167 U.S. 324, 331–334; *Keim* v. *United States*, 177 U.S. 290, 293–294; *Taylor and Marshall* v. *Beckham* (No. 1), 178 U.S. 548, 575–578.

Nor does enlistment for a stated term confer an absolute *statutory* tenure. While there are, of course, restrictions on separation of a serviceman before the expiration of his contract, Congress has always recognized the authority of the executive to discharge soldiers before the end of their enlistment period. Thus, the Act of April 10, 1806, "establishing Rules and Articles for the government of the Armies of the United States," Art. 11, 2 Stat. 359, 361, provided that "no discharge shall be given to a non-commissioned officer, or soldier, before his term of service has expired, but by order of the President, the Secretary of War, the commanding officer of a department, or the sentence of a general court martial." Re-enacted from time to time by the Congress in substantially the same form, see *Reid* v. *United States, supra,* the controlling statute today with respect to the Air Force, 10 U.S.C. 8811(b), expressly recognizes the authority of the Secretary to provide for premature administrative separation of airmen:

> No enlisted member of the Air Force may be discharged before his term of service expires, except—
>
> (1) As prescribed by the Secretary of the Air Force;
>
> (2) By sentence of a general or special court-martial; or
>
> (3) As otherwise provided by law.

Pursuant to this authority, the Secretary has promulgated a series of regulations providing for the involuntary administrative discharge of airmen. Among the causes specified are "unsuitability" (AFR

39–16), "unfitness" (AFR 39–17), or simply, the "convenience of the government" (AFR 39–14). Air Force Regulation 39–22, here involved, is one of the series. At the time of petitioner's discharge in 1956,[8] it prescribed a "general policy" of administratively discharging as "undesirable" airmen convicted by an American civil court of any offense punishable by death or imprisonment for more than one year. ¶ 5 (R. 99).

Given power to provide for premature separations, there can be no quarrel with the Secretary's decision to provide for the dismissal of persons who have been convicted of crime by a competent domestic tribunal. Nor do we understand petitioner to question the propriety of this procedure in the light of the concededly "broad administrative powers [of the Air Force] to discharge its personnel" (Br. 9). But petitioner complains that the Regulation is unreasonable because it provides for summary dismissal, "under less than honorable conditions," (1) without an adversary hearing, (2) without awaiting the outcome of an appeal from the conviction, and (3) without investigating the regularity of the proceedings which led to the judgment of conviction. We shall address ourselves to each of these points in turn.

[8] The full text of the regulation in suit, dated September 23, 1953, appears at R. 97–106. As later noted, the regulation was subsequently superseded by new AFR 39–22, dated April 14, 1959, pertinent portions of which are reproduced in the Appendix (pp. 27–35, *infra*).

1. As to so-called "regulars,"[9] former Air Force Regulation 39-22 expressly provided that "recourse to board proceedings is unnecessary" (¶5; R. 99). Whether or not adversary hearings are ever constitutionally required preliminary to the discharge of military personnel,[10] certainly no such procedure was

[9] Reserve airmen were entitled to an administrative hearing under rare circumstances. See ¶5a (R. 99–100). This provision of the Regulation was compelled by the Armed Forces Reserve Act of 1952, 66 Stat. 495, §§ 249(b) and (c), now incorporated in 10 U.S.C. 1163(c), which required board proceedings before the administrative separation of any reservist "under conditions other than honorable" unless he was sentenced to *imprisonment* after civil conviction. There is no similar statutory limitation as to regulars. In any event, the requirement is inapplicable where (as here) the airman is actually incarcerated by the civil authorities.

The present Regulation 39–22 extends the hearing procedure to *all* airmen, regulars and reservists alike, without regard to the sentence imposed, adding a right to have military counsel appointed. ¶7 (*App., infra*, pp. 30–32). That decision reflects a more generous waiver policy, dismissal now being withheld "often", whereas under the former Regulation waiver of dismissal was thought warranted only in "isolated cases." Compare ¶3 of the current Regulation (App., *infra*, p. 27) with ¶5b of the earlier Regulation (R. 100–102). Even now, however, there is no right to present live witnesses (¶7b(4)(d), App., *infra*, pp. 30–31); indeed, the hearing will not wait for the airman himself if he is unavailable. ¶¶7b(4)(b) and 7e (App., *infra*, pp. 31, 32–33). But in any event, the present policy of affording everyone a limited hearing in no way affects the reasonableness of the former Regulation which prescribed a different procedure.

[10] See *McElroth* v. *United States*, 102 U.S. 426; *Blake* v. *United States*, 103 U.S. 227; *Crenshaw* v. *United States*, 134 U.S. 99; *Wallace* v. *United States*, 257 U.S. 541. But see, *Bland* v. *Connally*, 293 F. 2d 852 (C.A.D.C.), and *Davis* v. *Stahr*, 293 F. 2d 860 (C.A.D.C.), indicating that an adversary hearing may be required when the serviceman is discharged for security reasons.

necessary here. The reason for dispensing with a hearing in the present context is obvious: once the fact of civil conviction has been established, as it may be by authenticated documents,[11] there remains nothing to hear. Short of re-trying the criminal case,[12] no purpose could be served by holding a hearing. The airman has already had full opportunity to contest the underlying charge in court proceedings. Once convicted, whether on his own plea or by the verdict of a jury, there are no additional relevant facts to establish; there are no further accusers to confront and cross-examine; and there is no remaining defense as to which the testimony of witnesses can be relevant.

Under the circumstances, the fact that an "undesirable discharge" certificate was prescribed by the Regulation does not affect the question. Whatever incidental prejudice resulted, neither the dismissal, nor its characterization, was punitive in purpose. The discharge itself was intended to promote the efficiency of the service by eliminating a member who would probably remain unavailable for an extended period and whose retention would adversely affect morale and discipline. The label "undesirable" was, at the time, an accurate description of the reason for the dismissal. The distinction between the punitive "dis-

[11] In the rare case where the airman contests that he is in fact the person described in the documents attesting to the conviction there may be occasion to hold a hearing limited to the issue of identity. No such problem is involved here, however. Petitioner has never denied his conviction.

[12] See pp. 16–17, *infra*.

honorable" and "bad conduct" discharges issued pursuant to court-martial proceedings and the "general" or "undesirable" discharges resulted from administrative action is well recognized. See *United States* v. *Kingsley*, 138 U.S. 87, 89, 92; *Reid* v. *United States*, *supra*; *Nistal* v. *Hausauer*, 308 N.Y. 146, 154, 124 N.E. 2d 94, 98, certiorari denied, 349 U.S. 962.[13] The fact is that, historically, the issuance of an "undesirable" discharge has never been viewed as "punishment"; nor is that its purpose. Cf. *Kennedy* v. *Mendoza-Martinez*, No. 2, this Term, decided February 18, 1963. There is accordingly no basis for invoking the procedural guarantees of the Fifth and Sixth Amendments with respect to the imposition of criminal penalties, even assuming they are otherwise relevant in the area of military discipline.[14]

2. Petitioner's claim that the Regulation is unreasonable because it fails to suspend dismissal while the underlying conviction is challenged on appeal fares no better.

There can be no serious question respecting the right of the military establishments to separate per-

[13] See also, Davis, *A Treatise on the Military Law of the United States* (3d ed., 1913), pp. 353, 356–357; Howland, *Digest of Opinions of the Judge Advocates General of the Army* (1912); p. 435; Pasley, *Sentence First—Verdict Afterwards: Dishonorable Discharges Without Trial by Court-Martial?* 41 Cornell L.Q. (1956) 545, at 552–568; Winthrop, *Military Law and Precedents* (1920 ed.), p. 549.

[14] See, generally, the reprint of the third James Madison Lecture by Mr. Chief Justice Warren, entitled "The Bill of Rights and the Military," in 37 N.Y.U.L. Rev. 181 (1962).

sonnel in the interest of the efficiency of the service. When a person is convicted of a felony "a garb of guilt" immediately attaches and this presumption is not removed by the taking of an appeal. It is certainly a reasonable judgment on the part of the military authorities that the retention on the rolls of a serviceman convicted of a serious crime will impair morale and discipline. Moreover, in many instances [15] (as here), the conviction is followed by immediate incarceration by the civil authorities, with the consequence that the serviceman is, as a practical matter, disabled from performing his military duties. This latter consideration is reflected in the provisions relating to juvenile offenders who, while generally not within the discharge policy of the regulation, were nevertheless to be separated if committed by the civil authorities for more than one year. ¶ 7b (R. 103).[16]

The Air Force practice is not original. In *McMullen* v. *United States*, 100 Ct. Cls. 323, certiorari denied, 321 U.S. 790, the forfeiture provision of former section 113 of the Criminal Code [17] (the conflict of in-

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[15] Petitioner's case is, unfortunately, not an isolated instance. The Air Force, the Army and the Navy (which have current regulations similar to Air Force Regulation 39-22) advise us that, in fiscal 1961, and again in fiscal 1962, over twenty-two hundred servicemen were separated from these services because of civil convictions.

[16] Again, the fact that the Air Force, in its current regulations, has departed from its former general policy of immediate discharge in these cases does not affect the reasonableness of its earlier policy. Even under the present version of Air Force Regulation 39-22, an immediate discharge of a serviceman is permitted under appropriate circumstances. ¶ 11 (App., *infra*, p. 34).

[17] R.S. 1782; Act of March 4, 1909, c. 321 § 113, 35 Stat. 1109.

terest statute with respect to federal officers and employees) was held to effect an immediate and irrevocable removal from military office upon conviction, without regard to a successful appeal. As petitioner has noted,[18] the Navy does not expressly require suspension of discharge action pending appeal. And the same rule is followed in the majority of states having similar laws. The prevailing view is that upon conviction of a felony, the public official or employee must be removed from his position immediately, without regard to the outcome on appeal. *State, ex rel. Zempel* v. *Twitchell* (Sup. Ct. of Wash.), 367 P. 2d 985; *People, ex rel. Keenan* v. *McGuane*, 13 Ill. 2d 520, 150 N.E. 2d 168, certiorari denied, 358 U.S. 828; *McKannay* v. *Horton*, 151 Cal. 711, 91 P. 598;[19] *State* v. *Redman*, 183 Ind. 332, 109 N.E. 184; *Bell* v. *Treasurer of Cambridge*, 310 Mass. 484, 38 N.E. 2d 660; *Attorney General, ex rel. O'Hara* v. *Montgomery*, 275 Mich. 504, 267 N.W. 550; *State, ex rel. Hunter* v. *Jurgenson*, 135 Neb. 136, 280 N.W. 886, certiorari denied, 307 U.S. 643; *State, ex rel. DeConcini* v. *Sullivan*, 66 Ariz. 348, 188 P. 2d 592; *Smith* v. *Noepped*, 204 Misc. 49, 120 N.Y.S. 2d 466; *In re Obergfell*, 239 N.Y. 48, 145 N.E. 323; *State, ex rel. Salisbury* v. *Vogel*, 65 N.D. 137, 256 N.W. 404; *State, ex rel. Giles* v. *Burke*, 101 Utah 48, 117 P. 2d 454; *State, ex rel. Blake* v. *Levi*, 109 W. Va. 277, 153 S.E. 587; *Becker* v. *Green County*, 176 Wisc. 120, 184 N.W. 715, affirmed, 186 N.W. 584; Annotation, 71 A.L.R. 2d 593. But see, *People* v. *Enlow*, 135 Colo. 249, 310 P.

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[18] See Petitioner's Brief, Appendix B.

[19] Cf. *Byers* v. *Smith*, 4 Cal. 2d 209, 47 P. 2d 705.

2d 539; and *City of Pineville* v. *Collett*, 294 Ky. 853, 172 S.W. 2d 640.

3. Finally, there is no merit in the suggestion that the Air Force must look behind the civil judgment of conviction and investigate the procedural regularity of the court action before discharging on that basis. Certainly the judgments of American [20] courts in felony cases are entitled to full faith and credit. Indeed, it would be unseemly for the military establishments, themselves excused because of special exigencies from observing all the normal safeguards, to question the adjudication of civilian tribunals where the defendant enjoys all the procedural rights guaranteed by a generous law. Proper respect for the independence of the civilian authority forbids any such "second-guessing." Moreover, since the dismissal is effected, not as punishment, but for practical reasons of service efficiency and morale, there is no useful purpose to be served by an investigation of the court proceedings. At least, refusal to undertake that inquiry is not unreasonable.

The facts of this case do not warrant an exception to the rule. Even if a closer look at the conviction is sometimes appropriate, this is not such an instance. Indeed, here, petitioner, for all that appeared, voluntarily pleaded guilty to a serious offense. To be sure, it develops that he was not then afforded an opportunity to obtain counsel and his conviction was subsequently reversed on that ground. But the

[20] Understandably, the Regulation did not accord the same automatic effect to the judgments of foreign courts. See ¶8 (R. 103). (The printed Record erroneously numbers the paragraph "3." instead of "8.")

absence of counsel, of itself, would not vitiate his plea, for he might have effectively waived his right to representation. There was thus no plain defect on the face of the record which the Air Force might be charged with noticing.

We conclude that former Air Force Regulation 39–22 prescribed a permissible procedure adopted "in the general interest of sound and reasonable personnel management and policy." S. Rep. 1268, 80th Cong., 2d Sess., p. 7. Having followed its own Regulation to the letter, in circumstances appropriate to its application, there can be no question about the correctness of the Air Force action in originally dismissing petitioner. It remains only to consider the effect of the reversal of his criminal conviction.

II

UNDER THE CIRCUMSTANCES, THE AIR FORCE WAS NOT REQUIRED TO REINSTATE PETITIONER UPON THE REVERSAL OF HIS CONVICTION

At the petition stage, petitioner conceded that the Air Force was not "required to retain [him] in the service after his conviction by the Oklahoma district court because of some contractual relationship" (Reply Brief, p. 1).[21] His sole contention, he said, was that "the Air Force was under an obligation to reinstate him upon reversal and vacation of conviction by the Court of Criminal Appeals of Oklahoma when

[21] If the concession were accepted, all of our discussion under Point I would be "irrelevant," as petitioner said (*ibid.*). But petitioner appears to have shifted position. His brief on the merits, if we understand it correctly, attacks the regulation itself and the original discharge effected under it (see pp. 8–10, 14–15).

he was discharged pursuant to a regulation which authorized discharge only for that one reason—criminal conviction by a civil court" (*ibid.*). We now address ourselves to that argument, emphasizing again that this is a matter entirely discrete from the question whether there was an obligation, when the criminal charges against petitioner were terminated, to correct the "undesirable" characterization in the discharge. The latter question is not in this case. See statement, *supra*, pp. 4–5.

1. There is, of course, no inherent right to reinstatement under the present circumstances. Assuming, as we do, that the original dismissal was proper, there is no question of revoking that action. This case, unlike *Harmon* v. *Brucker*, 355 U.S. 579, does not involve "an act of a government official which is in excess of his express or implied powers," or the appropriateness of granting "relief from * * * illegality." *Id.*, at 581–582. The initial action here was plainly authorized. The only question remaining is whether an intervening fact—the reversal of petitioner's conviction by the State appellate court—required a specific *new* action by the service—reinstatement with back pay.[22]

The general law of contracts imposes no such requirement. As Professor Corbin says: "If a contractor is prevented, by his arrest, and conviction for crime, from rendering substantial performance of his promise, the other party will be *discharged* in accord-

[22] Petitioner never requested different action, such as a change in the character of his discharge, from "undesirable" to "honorable," and has thus far declined the Air Force's offer of a corrected certificate.

ance with the usual rules governing failure of consideration * * * [e]ven if the contractor was not the unexcused cause of his own imprisonment * * *." 6 Corbin, *Contracts* (1962), § 1352, p. 454 (emphasis added). And, of course, a "discharge" ends the obligation; it does not merely suspend performance. See 5 *id.* (1951), §§ 1228–1229, pp. 935–938. A temporary inability to perform, if known to be such, may only justify suspension of the reciprocal obligation. But, when the impediment is likely to continue and substitute services may have to be procured, the probability of long unavailability is justification for a complete discharge. 6 *id* § 1253, pp. 7–16; § 1348, pp. 439–442. Thus, here, the Air Force, faced with the case of an airman who, whether by his own fault or not, was likely to remain disabled for five years, was fully justified in terminating its "contract" with him. And, having done so, it was under no legal duty to revive the agreement or enter into a new contract for his services.

Certainly, petitioner has no special right to reinstatement because his contract is with the government. Indeed, as a soldier, he is, in effect, an employee at will. And even in the context of dismissal for cause, there is no obligation to reinstate upon a later showing that the grounds for discharge may not have been well founded. Thus, in *Finn* v. *United States*, Ct. Cls. No. 254–58, decided January 18, 1961, the court, in effect, upheld the Internal Revenue Service's refusal to reinstate an employee discharged for conspiring to submit a false report despite his subsequent acquittal on the same charges. The same result was sustained

with respect to another Internal Revenue Service employee in *Croghan* v. *United States*, 116 Ct. Cls. 577, certiorari denied, 340 U.S. 854. And, while they were ultimately reinstated by discretionary executive action, Customs and Post Office employees have been held to have no right to reinstatement in comparable circumstances. *Eberlein* v. *United States*, 257 U.S. 82; *Bryant* v. *United States*, 122 Ct. Cls. 460, certiorari denied, 344 U.S. 913. See also, *State, ex rel. Guthrie* v. *Chapman*, 187 Wash. 327, 60 P. 2d 245. There is certainly no justification for a different rule in the case of the military services. As one would expect, the same principle governs here, too. See *McMullen* v. *United States, supra.*

2. Petitioner, however, relies on the statute authorizing the creation of the Air Force Board for the Correction of Military Records, claiming to find there a mandate for reinstatement under the present circumstances. But the text of the provision does not bear this out. In pertinent part, 10 U.S.C. 1552(a) reads:

> The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, *may* correct any military record of that department *when he considers it necessary* to correct an error or remove an injustice. [Emphasis added.]

Plainly, this is a grant of discretionary authority, not a mandate. The language is not misleading: the history of the provision clearly indicates that its purpose was to shift to the executive branch the burden

of considering relief as a matter of grace in those cases formerly handled by the Congress through private bills.[23] See 40 Ops. Atty. Gen. 504 (1947); *Ogden* v. *Zuckert*, 298 F. 2d 312, 314–315 (C.A.D.C.). See also, *Friedman* v. *United States*, 310 F. 2d 381, 404 (Ct. Cls.); *Lipp* v. *United States*, 301 F. 2d 674 (Ct. Cls.). But even if the statute imposes an obligation to take affirmative action in some contexts, it cannot have that effect here.

The original discharge was in no sense a mistake. As we have already noted, petitioner was dismissed not because of his actual guilt, but because of his prospective unavailability and because of the morale problems involved in retaining a man authoritatively branded a criminal, whether rightly or wrongly. The reversal of his conviction accordingly does not affect the justification for the initial discharge. That action remains correct. We assume that petitioner was then entitled to a lifting of the "undesirable" label, but that is not what he requested, and that relief, in any

[23] As originally enacted, the legislation authorized the service secretaries "to correct any military or naval record *where in their judgment such action is necessary* to correct an error or remove an injustice * * *" (emphasis supplied). 65 Stat. 655. This was clearly understood by the subcommittee sponsoring the legislation as vesting discretion in the appropriate Secretary to determine when an occasion calling for the correction of an injustice existed. See, *Hearings Before a Subcommittee of the House Committee on the Armed Services on H.R. 1181*, 82d Cong., 1st Sess., 375–381 (1951). The present language of Section 1552(a) was enacted in 1956 (70A Stat. 116) as part of the general codification of Titles 10 and 32 relating to the Armed Forces and the National Guard and was not intended to be a substantive change. See H. Rep. 970, 84th Cong., 1st Sess., 8–9 (1955).

event, has been made available. He could demand no more, as a matter of right.

Doubtless, as a matter of *discretion,* the Correction Board might have ordered petitioner reinstated, with or without back pay. 10 U.S.C. 1552 (a) and (c). But this was a decision, at least within very broad limits, for the Board. The scheme of the law is to treat the man already discharged very much as an applicant for reinlistment, who must be recommended by prior creditable service and who, if that service was not altogether "honest and faithful," must convince the Air Force that his subsequent conduct has been good. See 10 U.S.C. 8253(b), 8256(c). There can be no serious claim that the Board and the Secretary were grossly arbitrary in refusing reinstatement to an airman whom they found to be thoroughly untruthful.

Nor was there anything improper about the Board's proceedings leading to the conclusion that petitioner was not a fit subject to take back into the Air Force. After his conviction had been set aside by the appellate court and the charges against him dismissed, petitioner, with the assistance of counsel, applied to the Correction Board for reinstatement in the Air Force. He indicated in his application that he desired to appear before the Board in person (R. 10), which was permitted as a matter of course under the Correction Board regulations. 32 C.F.R. 881.4(a) He testified before the Board voluntarily. Following some

remarks concerning his good character and prior good conduct, and under the guidance of his own counsel, he elected to discuss and explain the circumstances leading up to his conviction for second degree rape (R. 35). The Criminal Court of Appeals of Oklahoma had set aside that conviction for reasons unconnected with the merits of the charge. The accusation was of course a serious one, and since the Oklahoma appellate court, though reversing the conviction, had expressed strong doubts regarding petitioner's veracity,[24] it was not unreasonable for the Board members to inquire into the subject after petitioner voluntarily chose to broach it. In the Board's estimation, petitioner's responses to their inquiry were evasive, misleading, and unworthy of belief (R. 22). The Board members declined to recommend petitioner for reinstatement, not because of his conviction, but because of his conduct before them, which, in their view, demonstrated his unfitness for Air Force service. Their action was, we submit, reasonable and certainly within their province.

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[24] *Jackson* v. *State*, 316 P. 2d 213, 216: "The state charges the defendant had sexual relations with her. He denies that he had such relations with her, although he admits he was in bed with her. He related she kept her clothes on. This is the most unbelievable part of defendant's story, but the case is not here for review on the merits and such matters are not for our consideration at this time."

CONCLUSION

For the reasons stated, the judgment of the Court of Claims should be affirmed.

Respectfully submitted,

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APPENDIX

10 U.S.C. 1552 provides:

Correction of military records: claims incident thereto

(a) The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice. Under procedures prescribed by him, the Secretary of the Treasury may in the same manner correct any military record of the Coast Guard. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

(b) No correction may be made under subsection (a) unless the claimant or his heir or legal representative files a request therefor before October 26, 1961, or within three years after he discovers the error or injustice, whichever is later. However, a board established under subsection (a) may excuse a failure to file within three years after discovery if it finds it to be in the interest of justice.

(c) The department concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army,

Navy, Air Force, Marine Corps, or Coast Guard, as the case may be. If the claimant is dead, the money shall be paid, upon demand, to his legal representative. However, if no demand for payment is made by a legal representative, the money shall be paid—

(1) to the surviving spouse, heir, or beneficiaries, in the order prescribed by the law applicable to that kind of payment;

(2) if there is no such law covering order of payment, in the order set forth in section 2771 of this title; or

(3) as otherwise prescribed by the law applicable to that kind of payment.

A claimant's acceptance of a settlement under this section fully satisfies the claim concerned. This section does not authorize the payment of any claim compensated by private law before October 25, 1951.

(d) Applicable current appropriations are available to continue the pay, allowances, compensation, emoluments, and other pecuniary benefits of any person who was paid under subsection (c), and who, because of the correction of his military record, is entitled to those benefits, but for not longer than one year after the date when his record is corrected under this section if he is not reenlisted in, or appointed or reappointed to, the grade to which those payments relate. Without regard to qualifications for reenlistment, or appointment or reappointment, the Secretary concerned may reenlist a person in, or appoint or reappoint him to, the grade to which payments under this section relate.

(e) No payment may be made under this section for a benefit to which the claimant might later become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

(f) The Secretary of Defense for the military departments, and the Secretary of the Treasury for the Coast Guard, shall report to Congress every six months on claims paid under this section during the period covered by the report. The report shall include for each claim the name of the claimant, a brief description of the claim, and a statement of the amount paid.

10 U.S.C. 8811 provides:

Air Force enlisted members: discharge certificate; limitations on discharge

(a) A discharge certificate shall be given to each lawfully inducted or enlisted member of the Air Force upon his discharge.

(b) No enlisted member of the Air Force may be discharged before his term of service expires, except—

(1) as prescribed by the Secretary of the Air Force;

(2) by sentence of a general or special court-martial; or

(3) as otherwise provided by law.

Air Force Regulation 39-22, effective April 14, 1959, in pertinent part provides:

2. *The Conditions Which Subject an Airman to Discharge.* An airman is subject to discharge for misconduct under this regulation upon conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense for which the maximum penalty under the UCMJ is death or confinement in excess of one year; or which involves moral turpitude;

* * * * *

3. *Waiver Action.* Cases often arise which warrant waiver consideration with a view to retention of the airman in the service. In determining whether a waiver should be recommended, full consideration should be given to the gravity of the specific offense involved, the

circumstances relating thereto and any matters in extenuation. Additionally, the military record of the airman prior to the commission of the offense should be considered as well as prospects for rehabilitation. As a general rule, those involved in offenses of moral turpitude, as defined, should not be recommended for waivers. However, even in this category there may exist unusual circumstances warranting waiver consideration, although exceptions to the general rule should not be considered for those involved in homosexual offenses and those who have taken drugs intravenously. When a waiver recommendation is being considered for an airman involved in an offense of moral turpitude, the airman will be referred for psychiatric examination, and the report and recommendations of the psychiatrist will be attached to the file in the case.

4. *Constructive Waiver.* When information is received by a command to show that an airman is subject to discharge under this regulation, action should be instituted without delay to finalize the case with regard to discharge or waiver. If the required action is not taken, the airman may become the recipient of a constructive waiver, as the failure to exercise the option to discharge after disposition by civil authorities is known, signifies that the intention was to retain the airman in the service. The option to discharge under this regulation cannot be revived at a later date even though the behavior of the airman, subsequent to disposition by civil authorities, has demonstrated that he should have been recommended for discharge after all. What constitutes a later date is a matter for determination under the circumstances of a particular case. No specified time limit can be prescribed. It could be a matter of but a few weeks if the evidence at hand shows that he is currently being recommended for discharge under this regulation because of

events subsequent to the conviction, such as AWOL or commission of a new offense, and not solely because of the conviction itself, thereby demonstrating, in retrospect, that it was a mistake to have disregarded the conviction. Where action has been initiated, as required, to finalize a case after disposition by civil authorities is known, the passing of time would be immaterial to the issue of whether a constructive waiver has resulted, as the passing of time was necessary to process the case in order to arrive at an appropriate disposition.

5. *Types of Discharges Permitted.* An airman discharged under this regulation should be furnished an Undesirable Discharge, unless the particular circumstances in a given case warrant a General or Honorable Discharge. Criteria for the issuance of an Undesirable, General, or Honorable Discharge is outlined in paragraph 9, AFR 39-10. Commanders and members of boards of officers responsible for recommending discharge under this regulation, and commanders empowered to determine finally the type of discharge to be issued, *will review and be guided by* the criteria in their considgration of the type of discharge to be issued.

6. *Who May Authorize Discharge or Waiver:*

a. The commander exercising general court-martial jurisdiction is authorized to personally finalize cases under this regulation involving discharge or waiver when disposition of an airman was made by civil court in the zone of interior, Alaska, Territory or possession, except that he may designate his deputy and/or vice commander to personally finalize such cases when they do not involve the approval and issuance of an Undesirable Discharge.

b. Headquarters USAF is authorized to finalize cases under this regulation involving discharge or waiver when disposition of an airman was made by civil court of a foreign country.

7. *Procedure for Discharge.* When an airman is recommended for discharge under this regulation, the following procedure will apply:

a. *Counsel for the Airman.* The immediate commander will take action to obtain military counsel for the airman, who, if reasonably available, should be a lawyer.

b. *Notification to the Airman.* After arrangements have been made for military counsel to represent the airman, the immediate commander will call in the airman if he is available and furnish him a letter of notification, which will include the following:

(1) Notice of the proposed action to discharge him under AFR 39–22.

(2) Specific reason for the proposed discharge; type of discharge being recommended (Undesirable, General or Honorable), and advice that the final decision in the case rests with the discharge authority.

(3) That military counsel (give grade and name) has been obtained to assist him; that in lieu of appointed counsel, he may have counsel of his own choice, provided requested counsel is serving in the active military service and is reasonably available (such determination to be made by the immediate commander of the counsel requested); that in lieu of military counsel, he has the right to employ civilian counsel, and that if civilian counsel is employed, it should be understood that any expenses incident to the employment of civilian counsel will not be paid by the Air Force, as no funds exist for such purpose. Further, advise the airman that if he waives his right to military counsel, he must furnish a written statement to that effect, which will be attached to the file in his case.

(4) Advice that he has the opportunity to request or waive, in writing, the following privileges:

(a) To have his case heard by a Board of not less than three officers. In the case of non-

regular component members, all boards so convened shall include appropriate numbers from the Reserve components. In the case of female members, all boards so convened shall include at least one female officer.

(b) To appear in person before such board, subject to his availability, e.g., not in civil confinement.

(c) To be represented by counsel, who, if reasonably available, should be a lawyer.

(d) To submit statements in his own behalf.

(5) That if he waives his privilege to a hearing before a board of officers, he is required to submit a signed statement as indicated in attachment 1 to AFR 39-22. Furnish the airman a copy of AFR 39-22.

(6) That he confer with his counsel concerning the case and reply in writing with the least practicable delay, setting forth the privileges he elects. That if he waives board proceedings and wishes to submit written statements in his own behalf, he should submit these statements with his reply so they can be attached to the file in his case for consideration of the discharge authority.

(7) Any other information considered appropriate to the case.

c. *When Airman Requests a Board Hearing.* If the airman requests a board hearing the immediate commander will refer the case, without delay, to the commander exercising special court-martial jurisdiction, who will convene a board of officers.

NOTE: In foreign civil court cases, board proceedings will be reviewed for legal sufficiency by the staff judge advocate in the Headquarters of the commander exercising general court-martial jurisdiction. The recommendations of the commander exercising general court-martial jurisdiction will be furnished upon transmittal of the proceedings, through command channels, to Headquarters, USAF.

d. *The Board of Officers.* The board will consist of not less than three voting officers, at least one of whom is of field grade. If the airman had entered on active duty as a member of a Reserve component, the membership of the board will include a majority of Reserve officers, if available. Where a majority of Reserve component members is not available, the board will include not less than one Reserve component officer. Where the respondent is a female, at least one member of the board will also be a female. It will be the function of the board to recommend whether the airman should be discharged or granted a waiver to permit retention in the Air Force. Where a recommendation for discharge is made the board will also recommend the type of discharge to be issued to the airman.

e. *When the Airman is Not Available.* When the whereabouts of an airman is known but he is not available and could not be present at a board hearing even if such hearing were requested by him, as for example, when confined by civil authorities or other reason precluding his presence, military counsel will be appointed to represent the airman and notification of the proposed discharge will be accomplished by registered mail, return receipt requested. The airman will be informed of the appointment of counsel to represent him in his absence, of the privileges available to him, and that if he requests a board hearing it will be held in his absence. He will be requested to expedite his reply and advised that if reply is not received within 30 days of the date of letter of notification, the recommendation for his discharge, if approved by the discharge authority, may be effected in absentia, with the type of discharge determined to be appropriate by the discharge authority. In the event the airman does not reply within the prescribed time, discharge may be finalized, as

indicated. Where warranted by the distances involved or other circumstances, a period in excess of 30 days may be allowed the airman for his reply.

f. *AWOL Airmen Whose Whereabouts Are Unknown.* The procedures herein are waived with respect to AWOL airmen whose whereabouts are unknown. The discharge of such an airman may be effected, in absentia, with the type of discharge determined to be appropriate by the discharge authority.

* * * *

8. *Action of the Discharge Authority.* The discharge authority is authorized to finalize cases submitted to him as follows:

a. *Where Board Proceedings Are Not Involved.* Where the airman did not avail himself of a board hearing the discharge authority may authorize discharge of the airman or grant him a waiver, as considered appropriate. Where discharge is considered appropriate he also will determine the type of discharge to be issued.

b. *Where Board Proceedings Are Involved.* Where the airman had a board hearing the discharge authority may take the following action:

(1) If the board of officers recommended discharge he may authorize discharge or grant a waiver. If he authorizes discharge he may also approve the issuance of the type of discharge recommended by the board or approve the issuance of a better type of discharge. However, he may not approve a discharge inferior to the one recommended by the board.

(2) If the board of officers recommended waiver he may approve that recommendation and may not order discharge.

(3) If the findings of the board are not consistent with the facts in the case or the recommendations of the board are not consistent with the findings, the discharge authority

may set aside the board's findings and recommendations and direct that a new board of officers be appointed to hear and consider the case. In such instance no voting member of the new board may have been a member of the first board. Where a new board is appointed the proceedings of the first board, less the findings and recommendations, will be forwarded to the new board for its information and consideration.

9. *When the Immediate Commander Is Recommending Waiver.* When the immediate commander is recommending a waiver for the purpose of retention of the airman in the service, no action will be required under the provisions of paragraph 7, unless the discharge authority does not concur in the recommended waiver and believes that consideration should be given to the discharge of the airman. Where this situation arises the case will be referred back to the immediate commander in order that the airman can be accorded the privileges outlined in paragraph 7, as if he had been initially recommended for discharge.

* * * * *

11. *Appeals of Airmen to Civil Court Disposition.* An airman subject to discharge under this Regulation may be processed for discharge or waiver even though he has filed an appeal to the civil court action in his case or has stated his intention of doing so. However, it will be the general policy to withhold the execution of an approved discharge pending outcome of the appeal. In the event the appeal results in the conviction being set aside the airman will not be discharged under this Regulation, although he may be considered for discharge under other regulations, if appropriate, as outlined in paragraph 12. In the event the execution of a discharge under this Regulation is considered appropriate, without awaiting outcome of an ap-

peal, the case will be referred to the Director of Military Personnel, Headquarters, USAF, for a decision.

* * * * * *

27. *Retention in the Air Force Beyond Expiration of Term of Service.* Where the enlistment contract of an airman is nearing completion and he is on a duty status, although awaiting trial or the outcome of an appeal; and it is probable that his term of service will expire before the civil authorities decide his case, take the following action:

a. Call in the airman and suggest to him that he voluntarily extend his enlistment pending disposition of his civil court case. Explain to him that it is to his advantage to do so, since he will be entitled to pay and allowances so long as he remains on a duty status. Also, where applicable, explain to him that were he discharged he might be liable to confinement by civil authorities pending disposition of his case.

b. If the airman will not voluntarily extend his enlistment pending disposition of his civil court case, and it is probable that his enlistment will expire before such disposition, send a message report to Headquarters USAF, giving the following information:

(1) Date of enlistment and length thereof.

(2) Number of days time lost during the enlistment.

(3) Approximate date of trial or hearing on his appeal.

(4) Brief synopsis of background of civil court case.

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